

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 306 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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SONIJASHWANTLALNATWARLAL - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

Appearance :

MR PS CHAMPANERI for Applicant(s) : 1,
 MR. H.M.PRACHHAK, APP for Respondent(s) : 1,
 MR AM PAREKH for Respondent(s) : 2

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 28/10/2005

ORAL JUDGMENT

1. **RULE.** Mr. H.M.Prachhak, learned APP appears and waives service of notice of Rule on behalf of respondent no.1-State of Gujarat whereas Mr. A.M.Parekh, learned

advocate appears and waives service of notice of Rule on behalf of respondent no.2.

2. Since the matter has been amicably settled between the parties, with the consent of the learned advocates appearing for the parties this Criminal Revision Application is taken up for final hearing today and disposed of by this judgement.
3. By filing instant petition under Section 397 read with Section 401 of the Code of Criminal Procedure ("the Code" for short), the petitioner ("accused" for short) challenges the judgement and order dated 16.4.2005 rendered in Criminal Appeal no. 60 of 2004 by the learned Additional Sessions Judge and Fast Track Court no.6, Gandhinagar, by which the appeal filed by the accused came to be dismissed and thereby judgement and order dated 23.4.2004 rendered in Criminal Case no. 225 of 2001, by the learned JMFC, Kalol convicting and sentencing the petitioner for commission of the offence under Section 138 of the Negotiable Instruments Act ("the Act" for short) came to be confirmed.
4. It appears from the record of the case that respondent no.2 (complainant for short) advanced Rs.80,000/- to the accused. In turn, for repayment of the said amount accused has issued three cheques in favour of the complainant dated 1.11.2000 for Rs.5000/-, 3.12.2000 for Rs.25,000/- and 5.12.2000 for Rs.50,000/- drawn on Dena Bank, Shahpur Branch, Ahmedabad. On presentation of the said three cheques by the complainant for encashment, they were returned with an endorsement "insufficient fund". The complainant therefore served statutory notice by RPAD to the accused. The accused neither replied nor complied with the said notice and

therefore a complaint came to be filed by the complainant against the accused for commission of the offence punishable under Section 138 of the Act, in the Court of learned JMFC, Kalol which is registered as Criminal Case no. 225 of 2001.

5.The learned JMFC, Kalol recorded the plea of the accused. The accused denied the charge for commission of the offence under Section 138 of the Act and therefore he was put on trial.

6.At the end of the trial, on appreciation, evaluation and critical analysis of the evidence on record, the learned JMFC, Kalol came to the conclusion that the offence under Section 138 of the Act has been proved against the accused and therefore he recorded the finding of guilt against the accused and accordingly convicted him for the said offence and sentenced him to suffer SI for 6 months and fine of Rs.2000/- and in default of payment of fine SI for a further period of 15 days. It is also ordered that the accused shall pay to the complainant Rs.80,000/- as compensation.

7.Aggrieved thereby accused went in appeal before the Court of Sessions at Gandhinagar where the said appeal was registered as Criminal Appeal no. 60 of 2004.

8.On reappreciation, reevaluation and reanalysis of the evidence on record, the learned Additional Sessions Judge and Fast Track Court no.6, Gandhinagar confirmed the said order passed by the learned JMFC, Kalol convicting and sentencing the accused for commission of the offence punishable under Section 138 of the Act, which has given rise to the present petition at the instance of the accused.

9.Mr. P.S.Champaneri, learned advocate of the accused and

Mr. A.M.Parekh, learned advocate for complainant jointly submitted that the matter has been amicably settled between the parties outside the Court and in terms of the said settlement the accused has already paid Rs.25000/- in cash to the advocate of the complainant on 25.10.2005 and for the remaining amount of Rs.55,000/- the accused has paid Rs.25,000/- in cash to the complainant today, therefore in all accused has paid Rs.50,000/- in cash to the complainant and for the remaining amount of Rs.30,000/- the accused has handed over two cheques each of Rs.15,000/- which has been accepted by the complainant. It is therefore prayed by the learned advocates appearing for the parties that since the matter has been amicably settled between the parties and the accused has paid to the complainant an amount of Rs.80,000/- for which the cheque was issued by him, which was dishonoured and therefore conviction and sentence was recorded against the accused, the said order of conviction and sentence may be quashed and set aside by allowing this Criminal Revision Application.

10.Mr. H.M.Prachhak, learned APP for respondent no.1-State of Gujarat states that since the matter has been amicably settled between the parties, i.e. between the accused and the complainant outside the Court, appropriate orders may be passed.

11.This Court has considered the submissions advanced by Mr. P.S.Champaneri, learned advocate of the accused, Mr. H.M.Prachhak, learned APP for respondent no.1-State of Gujarat and Mr. A.M.Parekh, learned advocate for complainant and also perused the compromise purshis which is duly signed by both the parties and identified by their respective Advocates and also the solemn

undertaking filed by the accused with regard to the assurance that the cheques issued by him shall be honoured on presentation.

12. There is no dispute about the factual matrix that the accused has borrowed an amount of Rs.80,000/- from the complainant and in consideration of the said amount three cheques were issued by him in favour of the complainant which were dishonoured on presentation to the Bank with an endorsement "insufficient fund". Therefore a complaint came to be filed against the accused by the complainant for commission of the offence punishable under Section 138 of the Act. At the end of the trial, the accused was convicted and sentenced by the learned JMFC, Kalol and the appeal preferred by the accused against the order of conviction and sentence passed by the learned JMFC, Kalol came to be dismissed by the order passed by the learned Additional Sessions Judge, Gandhinagar.

13. Now there is a latest development between the parties and as per the development both the parties have settled the matter and as per the said settlement the parties have decided to put an end to the litigation which was initiated by the complainant by filing Criminal Case no. 225 of 2001.

14. It may be noted that the offence under Section 138 of the Act is now made compoundable by inserting Section 147 of the Act.

15. On perusal of the compromise purshis, it is seen that the accused has paid Rs.25,000/- in cash to the Advocate of the complainant on 25.10.2005 and an amount of Rs.25,000/- is also paid by the accused in cash today and for remaining amount of Rs.30,000/- accused

has issued two cheques of Rs.15,000/- each in favour of the complainant. The complainant has received an amount of Rs.80,000/- for which three cheques were issued, in full and final settlement of his dues Rs.80,000/- (Rs.50,000/- by cash and Rs.30,000/- by two cheques). The undertaking is also filed by the accused that the cheques issued by him shall be honoured.

16. In aforesaid view of the matter and since by virtue of Section 147 of the Act, offence under Section 138 of the Act is compoundable, the offence is compounded and therefore the order passed by the learned JMFC, Kalol, convicting and sentencing the accused which is affirmed by the learned Additional Sessions Judge, Gandhinagar, deserves to be quashed and set aside by allowing this Criminal Revision Application in exercise of powers conferred under Section 397 read with Section 401 of the Code.

17. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 23.4.2004 rendered in Criminal Case no. 225 of 2001 by the learned JMFC, Kalol, convicting and sentencing the accused for commission of the offence under Section 138 of the Act which is affirmed by the learned Additional Sessions Judge, Gandhinagar vide order dated 16.4.2005 rendered in Criminal Appeal no. 60 of 2004 is hereby quashed and set aside and a consequence thereof accused is acquitted of the offence under Section 138 of the Act. Fine of Rs.2000/- paid by the accused in the Court of learned JMFC, Kalol shall be refunded to him upon due verification.

18. The accused is on bail, therefore his bail bond shall stand canceled and surety is discharged.

19.The compromise purshis duly signed by both the parties and identified by their respective advocates and the solemn undertaking filed by the accused, which is notarised before a Notary, shall be retained on record of the case.

Rule is made absolute.

(A.M.Kapadia,J)

Jayanti*