

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 4888 of 2022

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SONI ANILKUMAR PRAHLADBHAI
Versus
STATE OF GUJARAT

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Appearance:

MR.AMIT R JOSHI(6682) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MR PRANAV TRIVEDI, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 06/06/2022

ORAL ORDER

1. By way of this petition under Articles 226 and 227 of the Constitution of India r/w Section 482 of the Cr.P.C, the petitioner - accused has approached this Court for the following reliefs :

“A. Your Lordship may be pleased to admit and allow this petition.

B. Your Lordships may be pleased to issue an appropriate writ, order or direction by quashing and setting aside the order passed by the learned Sessions Court at Patan in Criminal Revision Application No.196 of 2021 dated 24.3.2022 at Annexure-A to the present petition as well as order dated 7.12.2021 below Exh.80 in Criminal Case No.334 of 2017 passed by the learned Principal Civil Judge and Judicial Magistrate First Class at

Harij at Annexure-B to the present petition, in the interest of justice.

C. Pending admission, hearing and final disposal of this petition, be pleased to stay the further proceedings of the Criminal Case No.334 of 2017 below Exh.80 at Annexure-B to the present petition, in the interest of justice.

D. Your Lordships may be pleased to pass such other order as may be deemed just and proper in the circumstances of the case.”

2. Short facts as can be gathered from the memo of petition, stated as under :

2.1 That one criminal complaint being Criminal Case No.334 of 2017 filed before the learned Principal Civil Judge and Judicial Magistrate First Class at Harij under the provision of Section 138 of the Negotiable Instruments Act against the present petitioner.

2.2 After completion of recording of further statement under Section 313 of the Cr.P.C., the petitioner submitted an application at Exh.80 dated 26.10.2021, tendering his examination-in-chief.

2.3 The learned Principal Civil Judge and Judicial Magistrate First Class at Harij, vide its order dated 7.12.2021, dismissed the said application below Exh.80.

3. Feeling aggrieved by the aforesaid, the petitioner approached the learned Sessions Judge, Patan by way of Criminal Revision Application No.196 of 2021. The said Criminal Revision Application, after having heard the parties, the learned Sessions Judge, Patan has rejected by way of judgment and order dated 24.3.2022.

4. Feeling aggrieved by the aforesaid, the petitioner - original accused has approached this Court by way of this Special Criminal Application for the relief stated herein-above.

5. I have heard Mr.Amit Joshi, learned counsel appearing for the petitioner and Mr.Pranav Trivedi, learned Additional Public Prosecutor for the respondent - State.

6. Mr.Amit Joshi, learned counsel for the petitioner, submitted that the courts below have committed serious error in rejecting the application at Exh.80. He further submitted that both the courts below have not properly appreciated the provision of Section 145 of the Negotiable Instruments Act. Learned counsel strongly relying upon the provision of Section 315 of the Cr.P.C., contended that the accused is also said to be competent witness and thus, the courts below ought not to have rejected the application Exh.80. According to Mr.Joshi, both the courts below have completely misunderstood and misread the provision of Section 315 of the Cr.P.C., by not allowing the petitioner to file examination-in-chief.

6.1 Mr.Joshi, learned counsel, with a view to strengthen his contentions, relied upon the judgment of the Coordinate

Bench of this Court in the case of **Rakeshbhai Maganbhai Barot v. State of Gujarat**, reported in **2019 (4) GLR 2719**.

6.2 By making above submissions, Mr.Joshi urged this Court to allow the present petition.

7. *Per contra*, Mr.Pranav Trivedi, learned Additional Public Prosecutor for the respondent - State, vehemently opposed the present petition, contending that the orders passed by the courts below are perfectly justified and within the four corners of law. Mr.Trivedi submitted that present application appears to have been filed by the accused is with an intention to derail the proceedings. He further submitted that normally, the accused can give his evidence on oath as envisaged under Section 243 of the Cr.P.C. However, if the accused wants to be treated himself as a witness as envisaged under Section 315 of the Cr.P.C., in that event the accused has to specifically file an application in writing seeking permission to be termed as 'witness'. Mr.Trivedi further submitted that in the instant case, the petitioner has not filed any application seeking permission treating him as an accused. Instead, straightaway, he filed an application at Exh.80 requesting the trial court to accept the examination-in-chief, by relying upon the judgments cited by the Advocate for the petitioner. Mr.Trivedi, therefore, submitted that unless there is specific permission is sought for and in turn, granted by the trial court, accused cannot tender examination-in-chief, but can give his evidence on oath under Section 243 of the Cr.P.C, as provided.

7.1 By making above submissions, Mr.Trivedi urged this

Court to dismiss the present petition.

8. I have heard the learned counsel appearing for the respective parties and have gone through the material produced on record in detail. No other and further submissions have been canvassed by learned counsel for the respective parties, except what are stated herein-above.

9. Having heard the submissions of the learned advocates, a short question that falls for consideration of this Court is whether the order passed by the trial court as well as the appellate court refusing to accept the examination-in-chief of the accused, is justified?

10. So as to consider the aforesaid question, it would be apt to note relevant provision of Section 315 of the Cr.P.C., which reads, thus;

“315. Accused person to be competent witness:

(1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that —

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

(2) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107, or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or

Part D of Chapter X, may offer himself as a witness in such proceedings:

Provided that in proceedings under section 108, section 109 or section 110, the failure of such person to give evidence shall not be made the subject or any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.”

11. Bare perusal of the provision of Section 315 would indicate that accused person can be competent witness, provided there is a written permission or there is a written request made to the concerned court at the instance of accused. Thus, in view of the provision of Section 315 of the Cr.P.C., accused person can be a competent witness, but before that, accused is required to request in writing to the concerned Court.

12. Keeping in mind the aforesaid legal provision as well as the facts of the present case, it appears that in the instant case, the petitioner has filed an application at Exh.80 dated 26.10.2021 before the concerned Magistrate, requesting to accept his examination-in-chief. I have an occasion to go through the certified copy of the original application at Exh.80. It appears that the petitioner by relying upon the judgment in the case of **Rakeshbhai Maganbhai Barot** (supra), straightaway, sought to submit his examination-in-chief. Admittedly, no written request made to the concerned court as envisaged in Section 315 of the Cr.P.C. Keeping in mind this peculiar and distinguishing fact and the mandate of Section 315 of the Cr.P.C., in my considered opinion, both the

courts below have committed no mistake in not accepting the examination-in-chief of the present petitioner.

13. So far as the reliance place by learned counsel for the petitioner in judgment of the Coordinate Bench of this Court in the case of **Rakeshbhai Maganbhai Barot** (supra) is concerned, in the said judgment, the Coordinate Bench has noted the facts as under :

“2. It appears from the materials on record that the respondent no.2 herein - original complainant filed a private complaint in the Court of the Chief Judicial Magistrate, Himmatnagar, against the applicant herein for the offence punishable under Section 138 of the Negotiable Instruments Act. The complaint has been registered as the Criminal Case No.3145 of 2014 and the same is pending as on date in the Court of the Chief Judicial Magistrate, Himmatnagar. The applicant - original accused preferred an application Exh.128, which reads as under :

“1) The present matter is at the stage of evidence of the accused.

2) The court has refused to accept the evidence of the accused on oath, therefore, it is necessary to file the present application.

3) This application is preferred relying upon the judgment dated 21.04.2013 delivered in the case of Banking Association V/s. Union of India, whereby all the courts of the country are directed to follow the instructions contained therein.

“The Apex Court appreciating the efforts of Bombay and Kolkata High Courts for speedy disposal of 138 cases, finally laid down the following procedure to be observed by all criminal courts in the country for speedy and expeditious disposal of 138 cases. The essence of these procedures can be summarized as follows:

“The Apex Court of the country has given directions to make speedy disposal of the complaints of Section-138 of the Negotiable Instrument Act. The said directions are mentioned at last in the judgment annexed herewith. I request the Ld. Court to go through the same. It is mentioned in the Para-5 that "Ld. Courts should accept the evidences of the witness on oath instead of recording it orally. Ld. Court can direct the witnesses of the complainant and accused to remain present for cross - examination as and when the Ld. Court calls for.”

4) The Hon'ble Supreme Court has passed this judgment after considering the decision in the case of Mandavi Cooperative Bank Ltd. v/s. Nimesh Thakore and, therefore, the directions given in this judgment should be followed by all the courts of the country.

5) Before disposing of the present application, the court should take into consideration that, “not only the courts should follow the laws, but they should also follow the directions given by the Hon'ble Apex Court.”

In the aforesaid circumstances, by submitting this application we, the accused, as well as our witnesses, propose to give our evidence on affidavit by way of examination-in-chief. Therefore, an appropriate order be passed for giving evidence of the accused as well as of the witnesses of the accused on affidavit by way of examination-in-chief.”

14. Having gone through the aforesaid facts, it is emerging that in the said case, the accused preferred an application at Exh.128 and wherein, written request appears to have been made for submitting evidence on affidavit by way of examination-in-chief. However, in the instant case, no such written request came to be made by the petitioner to the

concerned Magistrate and straightaway, moved an application Exh.80, submitting examination-in-chief. In view of the aforesaid, the facts of the present case and the facts of the case relied upon by the petitioner are materially different and thereby, the same are not applicable.

15. In view of the aforesaid, the present petition is bereft of any merits and thereby, requires to be dismissed and the same is accordingly dismissed.

V.J. SATWARA

(NIRAL R. MEHTA,J)

