

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION NO. 1046 of 2022

MAHESHSINH BABUSINH ZALA

Versus

STATE OF GUJARAT

Appearance:

MR. HARDIK K RAVAL(6366) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MR LB DABHI, APP for the Respondent(s) No. 1

CORAM:**HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**

Date : 31/01/2022

ORAL ORDER

1. With the consent of learned advocates appearing for the parties, present application is taken up for final disposal today.
2. Learned advocate Mr.Ravi B. Shah states that he has received instructions to appear on behalf of respondent No.2. He is permitted to file his Vakalatnama in the Registry. Registry to accept the same.
3. Rule. Learned APP Mr. L.B. Dabhi for respondent no.1 and learned advocate, Mr. Ravi B. Shah for respondent no.2 waive service of notice of Rule.
4. By way of the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short, the 'Code'), the applicant prays for quashing and setting aside the judgment and order dated 20.12.2021 passed by the learned Judicial Magistrate, First Class, Talod, in Criminal Acse No.913 of 2021, by which, the present applicant – accused has been convicted for the offence punishable under Section 138 of

the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for a period of six months. The applicant was also directed to pay Rs.10,000/- by way of fine within stipulated time.

5. Heard learned advocate, Mr. Hardik K. Raval for the applicant, learned APP Mr. L.B. Dabhi for respondent no.1 and learned advocate, Mr. Ravi B. Shah for respondent No.2.
6. At this state, learned advocate for the applicant submitted that now the dispute is amicably settled with respondent No.2 – complainant. Learned advocate for the applicant has also referred the affidavit of the complainant filed before this Court, a copy of which is placed on record at Page-29. He has also referred the No Due Certificate is placed on record at Page-32. It is, therefore, urged that the impugned judgment be quashed and set aside on the ground of settlement arrived at between the parties.
7. Learned advocate for the applicant has placed reliance upon the decision rendered by the Honourable Supreme Court in the case of **Damodar S. Prabhu Vs. Sayed Babalal H.** reported in **(2010) 5 SCC 663** and the order dated 06.05.2021 passed by this Court in Criminal Misc. Application No.18712 of 2020 (**Khokhar Iliyas Bismilla Khan Vs. State of Gujarat & Anr.**). Having relied on the said decisions, learned advocate for the applicant urged that

compounding of offence is permissible even after the conviction under Section 138 of the N.I. Act on certain conditions.

8. Learned advocate for the applicant submits that the applicant is ready and willing to deposit the required amount with the Gujarat State Legal Services Authority.
9. On the other hand, learned advocate Mr.Ravi B. Shah also submitted that a settlement is arrived at between the parties. Respondent No.2 – Bhavesh Kanubhai Patel, Manager of Baroda (Old) Dena Gujarat Gramin Bank, Nana Chekhla Branch is also present through video conferencing. When inquired, he has stated that if the impugned judgment is quashed and set aside, he has no objection. Learned advocate Mr.Shah has identified him and confirmed the factor of settlement between the parties.
10. Having heard learned advocates appearing for the parties and having gone through the material placed on record, it has emerged that the applicant has been convicted by the concerned Criminal Court for the offence punishable under Section 138 of the N.I. Act. However, now, the parties have amicably settled the dispute and, therefore, the complainant has filed an affidavit stating that if the order of conviction passed against the applicant is quashed and set aside, he has no objection.
11. This Court, in the case of ***Khokhar Iliyas Bismilla Khan Vs. State of Gujarat & Anr.***

(supra), had an occasion to deal with a similar issue which is involved in the present matter. The observations made in Paragraphs-16 and 16.2 of the said decision are as under:

"16. Applying the ratio of various decisions by this Court and the Apex Court as well as in view of the guidelines as laid down in the case of Damodar S. Prabhu (Supra) as also considering the object of Section 138 of the NI Act, which is mainly to inculcate faith in the efficacy of banking operations and credibility of transacting business through cheque as also taking into account the provisions of Section 147 which states that every offence punishable under this Act shall be compoundable. Further, it is mainly a transaction between the private parties where the State is not affected.

16.1 xxx xxx xxx

16.2. Generally the powers available under Section 482 of the Code would not have been exercised when a statutory remedy under the law is available, however considering the peculiar set of facts and circumstances it would not be in the interest of justice to relegate the parties to appellate court. Additionally when both the parties have invoked the jurisdiction of this Court and there is no bar on exercise of powers and the inherent powers of this court can always be invoked for imparting justice and bringing a quietus to the issue between the parties and hence, the present application is entertained."

12. In the case of ***Damodar S. Prabhu Vs. Sayed Babalal H. (supra)***, the Honourable Supreme Court has issued guidelines in Para-21, relevant

portion of which, reads as under:

"The Guidelines:- (i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

13. Keeping in view of the aforesaid decision rendered by the Honourable Supreme Court and the order passed by this Court, I am of the view that when the parties have settled the dispute amicably, compounding of the offence is required

to be permitted. Accordingly, the application is allowed. The impugned judgment and order of conviction dated 20.12.2021 passed by the learned Judicial Magistrate, First Class, Talod, in Criminal Acse No.913 of 2021 and all the other consequential proceedings arising out of the said judgment are quashed and set aside. Rule is made absolute, accordingly.

14. Respondent No.2 filed a complaint under Section 138 of the N.I. Act for dishonour of the cheque amounting to Rs.18,500/-. Therefore, as per the decision rendered by the Honourable Supreme Court, the applicant is required to deposit 15% of the amount of the cheque with the Gujarat State Legal Services Authority. Thus, the applicant is directed to deposit Rs.2,775/- within a period of four weeks from the date of receipt of a copy of this order with the Gujarat State Legal Services Authority. On production of receipt of the deposited amount as directed, the present order will be given an effect. Direct Service is permitted.

WEB COPY

(VIPUL M. PANCHOLI, J)

piyush