



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION NO. 245 of 2003

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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ARJANDAS RAMDAS SOLANKI
Versus
STATE OF GUJARAT & ANR.

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Appearance:

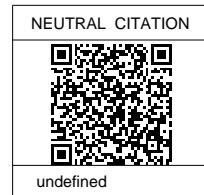
for the Applicant(s) No. 1
HCLS COMMITTEE(4998) for the Applicant(s) No. 1
MS RAKSHA S DIKSHIT(5568) for the Applicant(s) No. 1
MR NIRAV C THAKKAR(2206) for the Respondent(s) No. 2
MR HK PATEL, ADDL.PUBLIC PROSECUTOR for Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 08/05/2024
CAV ORDER

1. This revision filed under Section 397 read with Section 401 of Criminal Procedure Code challenges the judgment and orders dated 31.12.2000 passed by learned Chief Judicial Magistrate,

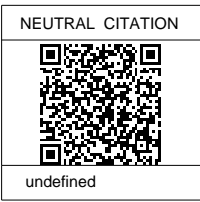


Jamnagar in Criminal Case No.1469 of 1996 whereby the present petitioner – Arjandas Ramdas Solanki, who was accused and another accused Mr.Narendra A. Mehta have been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and they were ordered to undergo simple imprisonment of one year and fine in tune of Rs.1,25,000/- was also imposed and in default of payment of fine, further sentence of simple imprisonment of three months was imposed. The said judgment was unsuccessfully challenged before the learned Sessions Judge in Criminal Case No.1 of 2003 wherein the learned Sessions Judge has confirmed the order passed by the learned Trial Court. Being aggrieved and dissatisfied with the concurrent findings arrived at by the learned Courts below, the present petitioner has preferred this revision.

2. Heard learned advocates for the respective parties and perused the material on record.

3. It could be noticed that the another accused Mr.Narendra Mehta had preferred Criminal Revision Application No.246 of 2003 before this Court and wherein learned advocate Mr.Nirav Thakkar appearing for respondent No.2 had produced the settlement arrived at between the parties outside the Court. Pursuant to which the offence against another accused Mr.Narendra Mehta has been compounded. The relevant paras of the oral order dated 24.04.2024 reads thus:

“2. Heard learned advocate Mr. Nirav C. Thakkar for respondent No.2 – *original* complainant and learned APP Mr.H. K. Patel for the respondent – State. Learned

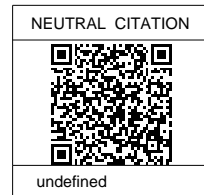


advocate for the petitioner is not present.

3. *Learned advocate Mr. Nirav C. Thakkar has placed on record a settlement deed dated 11.08.2021 between the petitioner – original accused and respondent No.2 – original complainant. According to such settlement deed, petitioner has paid an amount of Rs.1,00,000/- cash as full and final settlement to respondent No.2. Such settlement deed is taken on record.*

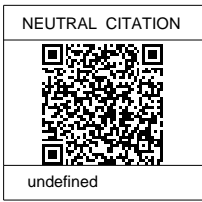
4. *In view of such settlement and when the offence being compoundable, present petition is allowed. Thereby, judgment and order of conviction and sentence dated 31.12.2000 passed by the learned Chief Judicial Magistrate, Jamnagar in Criminal Case No.1469 of 1996 as well as the judgment and order dated 12.03.2003 confirming such conviction and sentence passed by the learned Additional Sessions Judge, Jamnagar in Criminal Appeal No. 4 of 2003 are hereby quashed and set aside. Petitioner is acquitted from all the charges levelled against him.”*

4. What appears that present petitioner and Mr.Narendra Mehta – accused in Criminal Revision Application No.246 of 2003 both were jointly arraigned as accused in Criminal Case No.1469 of 1996 before the learned Chief Judicial Magistrate. They have jointly drawn cheque from the account of Ramapir Harijan Majoor Bandhkam Sahkari Mandali Limited in favour of the complainant Smt.Dhirajben Rameshchandra Katamal. Learned Chief Judicial Magistrate had held both the accused persons jointly responsible for the offence punishable under Section 138 of the Negotiable Instruments Act and passed judgment and order to convict both the accused and passed punishment directing both the accused to undergo identical sentence stated hereinabove. It was similar offence alleged by the complainant against two accused jointly.



5. Since the complainant has compounded the offence and entered into settlement agreement with another accused namely Narendra Mehta, the entire offence is compounded and in view of that this revision deserves consideration.

6. Even it could be seen that the disputed cheque has been issued by the two accused in capacity of President and Secretary of the Ramapir Harijan Majoor Bandhkam Sahkari Mandali Limited, a cooperative society registered under the Gujarat Cooperative Societies Act, 1961. It is pertinent to note that Ramapir Harijan Majoor Bandhkam Sahkari Mandali Limited has not been arraigned as an accused. Both the accused were arraigned as accused on claiming their vicarious liability. In view of Section 37 of the Gujarat Cooperative Societies Act, the cooperative society is a body corporate and as such, Section 141 of the Negotiable Instruments Act, 1881 attracts in the present case. The office bearers of the Ramapir Harijan Majoor Bandhkam Sahkari Mandali Limited could not be arraigned as accused without arraigning Ramapir Harijan Majoor Bandhkam Sahkari Mandali Limited as accused. There is a patent illegality in the impugned order. The issue was raised before the learned Sessions Judge but it was answered against the accused referring to judgment of Hon'ble Supreme Court in case of **Anil Hada vs. Indian Acrylic Limited – AIR 2000 SC 145**. However, the said judgment has been overruled by the Hon'ble Supreme Court in case of **Aneeta Hada vs. Godfather Travels and Tours (P) Limited – (2012) 5 SCC 661**, which was consistently followed in various judgments. In view of that, since there is a patent illegality in the impugned judgment, even on this count the revision deserves consideration.



7. This revision is allowed by quashing and setting aside judgment and order of conviction and sentence dated 31.12.2000 passed by the learned Chief Judicial Magistrate, Jamnagar in Criminal Case No.1469 of 1996 as well as the judgment and order dated 12.03.2003 confirming such conviction and sentence passed by the learned Additional Sessions Judge, Jamnagar in Criminal Appeal No.1 of 2003. The petitioner is acquitted from all charges levelled against him.

8. The petition stands disposed of, accordingly. Rule is made absolute to that extent. Record and proceedings, if called for, be sent back to the concerned Trial Court, forthwith.

GAURAV J THAKER

(J. C. DOSHI, J)