

GJSK180013742023



IN THE COURT OF 2nd ADDITIONAL SESSIONS JUDGE, AT IDAR.

Criminal Appeal No.89/2023.

Ex. : 8

APPELLANT (ORIGINAL ACCUSED):-

Mansuri Mustufabhai Gafurbhai(Antarsubawala)
Residing of :Panpur, Behind Parabada R.T.O.Office
Tal.: Himmatnagar, Dist.: Sabarkantha.

Vs.

RESPONDENT (ORIGINAL COMPLAINANT)

- (1) Parmar Rameshbhai Motibhai
Residing of:-Javanpura, Vaishali Society, Tal.: Idar
Dist.: Sabarkantha.
(2) The State of Gujarat.

ADVOCATES:-

Learned Advocate Mr.D.D.Desai for appellant / accused.
Learned Advocate Mr.M.J.Bhatt for respondent No.1.
Learned APP Mr.P.J.Soni for respondent No.2-State.

Subject: Criminal Appeal under section 374 of the Criminal
Procedure Code.

::JUDGMENT::

- 1)The present appeal has been preferred by the appellant/accused with a prayer to quash and set aside the impugned judgment and order dated 14/07/2023 passed in the Criminal Case No.1230/2016 by the Learned Additional Chief Judicial Magistrate, Idar by which the appellant-accused has been convicted for the offence punishable under section 138 of the N.I. Act and sentence to undergo simple imprisonment for six months and he

should also pay compensation of Rs.1,60,000/- to the complainant.

2) During the pendency of this appeal both the parties have jointly produced a compromise pursis vide Ex.5, and submitted that the dispute between them has been settled, so they may be granted permission for purpose of compromise in this matter. The respondent - original Complainant declared that he don't want to proceed further said Appeal as full amount has been given by the appellant-original accused to the respondent -original complainant and the matter has been settled. Both the parties were present and their Ld. Advocates were also present and they have admitted that the appellant has paid the amount of cheque to the original complainant-respondent and the dispute between the parties have been settled and no any due amount is remaining, they have also admitted their signatures in the compromise pursis vide Ex.5. Thus, it becomes clear that the matter has been settled, therefore, the permission has been granted for purpose of compromise.

3) Considering the above facts, it becomes very clear that the matter has been settled finally without any pressure and the parties have settled their dispute willingly, and therefore, the compromise is hereby accepted and request made by the parties to this Court to set aside the order passed in Criminal Case No.1230/2016 passed by the Learned Additional Chief Judicial Magistrate, Idar on 14/07/2023 is hereby accepted.

- 4) In view of the submission made by the Ld. Advocate by the parties and compromise pursis, the matter has been settled between the parties. The complainant has also admitted that he has received the amount, therefore the appellant is permitted to compound the offence for which he has been convicted i.e. under section 138 of the Negotiable Instruments Act.
- 5) In view of the aforesaid facts and circumstances of the case, parties have settled their dispute and amount due or the amount of cheque in question has been paid to the respondent i.e. the original complainant. So, the appellant has also requested this Court to permit him to compound the offence. Considering the decision of the Hon'ble Supreme Court in the case of the **Damodar S. Prabhu Vs. Sayed Babala H. (2010) 5 SCC 663**, the appellant is permitted to compound the offence under section 138 of the Negotiable Instruments Act, for which he has been punished and convicted.
- 6) In view of the aforesaid and the ratio laid down by the Hon'ble Apex Court in above judgments and the submission of both the parties, this Court without entering into merits of the case, has opined that the order of sentences and order of compensation passed by Ld. Trial Court is required to be set aside and the accused is required to be acquitted. Considering the facts and circumstances of this appeal and also considering the facts that the disputes between the complainant and the accused have been resolved and settled, this Court is of the view

that when matter is compounded and when appellant/accused has made out his plausible case it is to be considered and lenient view to be taken. Thus, if the appellant-accused is directed to deposit Rs. 1,000/- as cost before the Taluka Legal Services Authority, Idar the interest of justice will survive. Hence, I pass the following order :-

: ORDER :

- 1.** This Criminal appeal No.89/2023 is hereby allowed.
- 2.** In view of compromise pursis vide Ex.5 as matter is compounded. The impugned judgment and order dated 14/07/2023 passed in Criminal Case No.1230/2016 passed by the by Learned Additional Chief Judicial Magistrate, Idar is hereby set aside **on depositing Rs. 1000/- (Rupees one thousand only) as cost in Taluka Legal Service Authority, Idar.** Consequently, the appellant-accused is hereby ordered to be acquitted of the charge under Section 138 of the Negotiable Instrument Act.
- 3.** The fine/penalty amount, if any paid or deposited by the appellant/accused to be returned to him after the expiry of the period of appeal.
- 4.** R & P, if any, be sent back to the Trial Court with copy of the order of this Court.
- 5.** Bail and bond hereby stands cancelled.

Signed & Pronounced in the National Lok Adalat today on 09th day of September, 2023.

(Mrs.Falguni Saumil Parikh)
2nd Additional Sessions Judge

Place: Idar.
Date:- 09/09/2023.

Sabarkantha @ Idar.
Code No. GJ-00721

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