

GJRJ010069972023



Received on	03-08-2023		
Registered on	03-08-2023		
Decided on	14-09-2024		
Duration	Years	Months	Days
	01	01	11

**IN THE COURT OF 02nd ADDL. SESSIONS JUDGE
[P. J. TAMAKUWALA] AT RAJKOT.**

CRIMINAL APPEAL NO.532 of 2023

Order Below Exh.20

APPELLANT/ACCUSED:-

Balajibhai Popatbhai Bhanderi
Address -Madhuvan Park-2, Avadhpark,
Near Tulsipatra Apartment,Bapa sitaram Chok,
Mavdi Main Road,Rajkot

Versus

RESPONDENT/ COMPLAINANT:-

(1) State Of Gujarat
(2) Kirtibhai Laxmidas Patel
As a Officer Of Shri Shivsagar Credit Co.Op.Society Ltd.
Adult,Service,
At : Real Prime Shop No.110-112,
Bapa sitaram Chok,Mavdi Bypass Road,Rajkot

SUB: An Appeal against the Judgement passed by Ld. 9th A.C.J.M.,RAJKOT, in Criminal Case No.22953/2020 dated 05/07/2023.

Appearance :-

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Ld.Advocate(s) **MR. V. J. Gohel** for the appellant.

Ld. Advocate(s) **MR. J. P. Barot** for the respondent no.2/
complainant.

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~:: J U D G M E N T ::~

1) Present appeal is filed against the judgment and order dated 05/07/2023 which was passed by Ld. 9th A.C.J.M. Court, RAJKOT, (hereinafter referred to as "Trial Court" in short) in Criminal Case No. 22953 of 2020 whereby the Ld. Trial Court has convicted the appellant/accused u/s. 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as "N.I. Act" in short) and has ordered that the accused shall undergo simple imprisonment for ONE YEAR and shall also pay the compensation of cheque amount to the complainant within ONE MONTH and in default shall undergo further simple imprisonment for FIFTEEN DAYS. Hence, this appeal.

2) The brief facts of the case are as under:-

2.1. The complainant advanced loan to the accused and for the repayment of above stated amount, the accused has issued cheque of his account. The said cheque was deposited in the bank for clearing by the complainant which was

returned with the endorsement of "Funds Insufficient" and so, for that complainant had issued notice to the accused within prescribed time limit duly served upon him though accused has not complied with the said notice and for that Criminal case no.22953/2020 was filed against the accused U/s. 138 of the N.I. Act.

- 3) On behalf of the respondent Ld. advocate has filed the vakalatnama which is taken on record vide Exh.18.
- 4) I have heard learned advocates of both sides and gone through the judgment and papers on record.
- 5) During the course of hearing the Ld. advocate for the appellant has submitted pursis vide Exh-19 which is signed by both the parties and has declared that as complainant has been paid the amount which is due from the appellant and so does not want to proceed with the appeal. Therefore accused has preferred an application vide Exh.20 for setting aside the judgment of the Ld. Trial Court.
- 6) This Court has recorded compromise pursis between the parties which is produced on record vide Exh.19 and vide Exh-20 the application is given to set aside the conviction. On the day of filing of the compromise pursis, both the parties were examined by this court for the purpose of satisfaction that the compromise between the parties has been entered without any coercion, any

kind of influence and pressure. The complainant is present before the court along with his advocate and stated that he has received the cheque amount and has no objection if the offence is compounded in favour of the appellant. In the circumstances there is no need to passed any order for the same.

- 7) It was held by the Apex Court in ***Damodar S Prabhu v. Sayed Babalal H AIR 2010 Supreme Court 1907***, that the offence under section 138 is compoundable in view of section 147. It is well settled that it is in the interest of the State there should be an end of litigation and compromise between the parties would generate brotherhood in the society. Thus, the offence is hereby compounded and in the larger interest of justice the following final order is passed:

~~:: ORDER ::~~

1) The order Criminal Case No.22953 of 2020 dated 05/07/2023 of Ld. 9th A.C.J.M. Court, RAJKOT convicting the present appellant which is under challenge is hereby set aside and offence is compounded.

2) The appellant is hereby acquitted in Criminal Case No.22953 of 2020.

3) The appellant to furnish bail bond of Rs.10,000/- as per the provision of Section 437(A) of the Cr. P.C.

4) The present matter be consigned in the record room as per rule, simultaneously, the R. & P., if any, be sent back along with copy of this order to the Ld. 9th A.C.J.M. Court, RAJKOT.

Pronounced in the open Court today on 14th day of September, 2024.

Date: 14/09/2024

[P.J.Tamakuwala]

Place: Rajkot.

02nd Additional Sessions Judge,

Lok-Adalat

Rajkot. [UIC Code No.GJ00581]