

HIGH COURT OF GUJARAT

RAJENDRAKUMAR CHUNILAL SHAH

Versus

RAJNIKANT SHANKARLAL SHAH

Date of Decision: 04 November 2009

Citation: 2009 LawSuit(Guj) 1081

Hon'ble Judges: [M D Shah](#)

Eq. Citations: 2010 3 BankCas 75, **2010 1 GCD 365**, 2010 88 AllIndCas 822

Case Type: Criminal Revision Application

Case No: 305 of 2009

Subject: Criminal

Acts Referred:

[Code Of Criminal Procedure, 1973 Sec 397, Sec 401](#)

[Negotiable Instruments Act, 1881 Sec 138](#)

Final Decision: Revision allowed

Advocates: [G Ramakrishnan](#), [Manisha Lavkumar](#), [R C Jani](#)

Cases Referred in (+): 2

M D Shah, J.

[1] All these Criminal Revision Applications under Section 397 read with Section 401 of the Code of Criminal Procedure have been filed by the petitioner-original accused being aggrieved and dissatisfied by the judgments and orders dated 8-5-2009 passed by the learned Addl. Sessions Judge, Court No.3, Sabarkantha at Modasa, in respective Criminal Appeals Nos.45 of 2007, 43 of 2007 and 44 of 2007 whereby the learned Judge has confirmed the judgments and orders dated 6-11-2007 passed by the learned Judicial Magistrate (First Class), Modasa, in Criminal Cases Nos.4998 of 2006, 4468 of 2006 and 476 of 2007 respectively convicting and sentencing the applicant for the offence punishable under Sec.138 of the Negotiable Instruments Act to suffer SI for six months in each case and to pay an amount of Rs.50,000/-, Rs.1,00,000/- and Rs.1,50,000/- in respective case as compensation to the complainant.

[2] Since common facts and law are involved in all these revisions, all these revisions are heard together and are being decided by this common judgment.

[3] The case of the prosecution in short is that three criminal complaints being Criminal Cases Nos.4998 of 2006, 4468 of 2006 and 476 of 2007 were filed by the original complainant-present respondent No.1 before the learned Judicial Magistrate (First Class), Modasa, for the offence punishable under Sec.138 of the Negotiable Instruments Act on the ground that three different cheques drawn on different dates and amounts given by the applicant-accused were dishonoured by the bank on presentation.

[4] On conclusion of trial, upon hearing the learned advocates appearing for the respective parties, learned Judicial Magistrate(First Class), Modasa, delivered the impugned judgments and orders of conviction and sentence as aforesaid. The appeals preferred before the Addl. Sessions Judge, Sabarkantha at Modasa were however rejected. Hence, the present revisions by the applicant-accused.

[5] Heard learned advocate, Mr.G.Ramakrishnan for the applicant, learned advocate, Mr.R.C.Jani for the respondent No.1 and learned APP, Ms.Manisha Lavkumar for the respondent No.2-State in each revision.

[6] It is submitted by learned advocate, Mr.G.Ramakrishnan for the applicant that the applicant has deposited the entire cheque amounts pertaining to each Criminal Case. It is further submitted that the applicant has remained in jail for the period from 27-8-2009 to 29-10-2009. He is however pressing these revisions only on the point of quantum of sentence awarded by the trial court and does not press any other points. He has relied on in the case of [Narsingh Das Tapadia Vs. Goverdhan Das Partani and another](#), 2000 7 SCC 183 in the case of [Sudhash Vs. State of Rajasthan and another](#), 2004 11 SCC 398.

[7] It is submitted by learned advocate, Mr.R.C.Jani for the respondent No.1-original complainant that these amounts have been deposited not on his own volition but in pursuance of order passed by the Court and hence, taking into consideration the object of the legislature, merely because the amounts have been deposited before the Court, no leniency should be shown to the applicant.

[8] It is to be noted that the learned advocate for the applicant has restricted his submissions only on the point of quantum of sentence. Hence, I would not like to reproduce or discuss the entire evidence which are on record as the same remained unchallenged. This Court is also in complete agreement with the reasons adopted and the conclusions arrived at by the courts below so far as the conviction of the present applicant in each Criminal Case is concerned. However, the question to be considered is

as to whether the applicant in the given facts and circumstances of the case is entitled to reduction of sentence which has been awarded by the trial court or not.

[9] In view of the fact that the applicant has deposited the entire cheque amounts, there is no purpose in keeping the applicant in jail. In this connection, though no reference to any decision is required to be made, reference may be made to the decision rendered by the Apex Court in the case of [Narsingh Das Tapadia Vs Goverdhan Das Partani and Another](#), 2000 7 SCC 183 wherein it has been held at Head Note-B as under:

"Negotiable Instruments Act, 1881-S.138- Sentence-Mitigating factors-Accused having paid a sum of Rs.3,94,243/- which included the cheque amount of Rs.2,30,000/- as well as interest payable thereon-In such circumstances, sentence of six months' simple imprisonment awarded by trial court, substituted by Supreme Court by a fine of Rs.5000/-."

Applying the ratio of the aforesaid decision to the facts of the present cases, these revisions are required to be partly allowed by reducing the sentence.

[10] These revisions are partly allowed. While confirming the conviction of the present applicant in each Criminal Case, the sentence imposed on the original accused in each case is reduced to the period already undergone by him in jail. Judgments and orders dated 8-5-2009 passed by the learned Addl. Sessions Judge, Court No.3, Sabarkantha at Modasa, in respective Criminal Appeals Nos.45 of 2007, 43 of 2007 and 44 of 2007 confirming the judgments and orders dated 6-11-2007 passed by the learned Judicial Magistrate (First Class), Modasa, in Criminal Cases Nos.4998 of 2006, 4468 of 2006 and 476 of 2007 respectively are accordingly modified to the aforesaid extent. Rule is made absolute to the aforesaid extent.

[11] Office is directed to place a copy of this judgment in each matter.