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**IN THE COURT OF, 7TH ADDL. SESSIONS JUDGE,
AHMEDABAD [RURAL] AT, NAVARANGPURA.**

EXH. _____

Criminal Appeal No.137/2023

Appellant (Ori. Accused) :

Ramzanbhai Zinabhai Sama

Aged: 46 Years, Occ.: Business,
Residing at: Juned Park, Gyaspur,
Ahmedabad-382405.

V E R S U S

Opponents:

1. Kotak Mahindra Bank Ltd.

Through its Authorized Officer,
At 401-405, Siddhivinayak Complex,
4th Floor, Shivranjani Crossroad,
Satellite, Ahmedabad.

2. State of Gujarat.

APPEARANCES :

L.A. Mr. M. G. Shaikh, for the Appellant.

L.A. **Mr. R. C. Jain**, for the Opponent No. 1.

LD. A.P.P. **Mr. R. P. Thaker** for Opponent No. 2.

Criminal Appeal U/s.374 of Criminal Procedure Code.

JUDGEMENT

- (1) The present criminal appeal is filed by the present appellant being aggrieved and dissatisfied by the Judgement and order dated 12-04-2023 passed by the Ld. Presiding Officer, Special Court (N. I. Act), Ahmedabad [Rural], (In short 'Ld. Trial Court') in Criminal Case No. 2308 of 2017, whereby, Ld. Trial Court was pleased to convict the present appellant for the offence U/s. 138 of the Negotiable Instruments Act and passed sentence of 06 (Six) Months simple imprisonment as well as to pay fine of Rs.1,75,000/- and in default of payment of fine further sentence of simple imprisonment for 01(One) month.
- (2) The appellant had filed application for suspension of the Judgment and order passed by the Ld. Trial Court before the Appellate Court in the appeal and as per the order dated 25-09-2023, Judgement and Order of the Ld. Trial Court was suspended and accused/appellant was on bail out on surety/bail bond of Rs. 15,000/- and one surety of like amount. It was also ordered to deposit 10% of cheque amount before the Ld. trial Court within 30 Days.

- (3) The brief facts of the parties are that the appellant-accused had availed loan worth Rs.5,73,875/- from the complainant bank by executing loan agreement. After obtaining loan the appellant-accused had paid the installment for some time, but, after some times he stopped paying installments and, therefore, the complainant bank declared him Defaulter and when the complainant-bank demanded for the remaining amount from the appellant-accused he issued cheque of Ahmedabad District Co-operative Bank Ltd. Sarkhej Branch, Ahmedabad bearing cheque no. 294690 worth Rs.1,75,000/- dated 22.12.2016 in favor of complainant-bank, however, on presentation of the said cheque, it was returned with an endorsement 'insufficient fund', thereafter, notice was issued to the accused which was not complied with. The complaint was filed and after the trial, Ld. Trial Court has convicted appellant/accused. Hence this appeal.
- (4) During the course of this appeal, parties compromised the dispute out of court and filed their compromise Pursis vide Exh. 14, where it has been stated that compromise has been arrived between the parties by paying the cheque amount to the complainant. An Application vide Exh. 15 is also filed, for set aside the order of the Ld. Trial Court, wherein, as per the complainant, they have settled the debt and compromised in the appeal and the amount was given to the original complainant out of the Court and there is no outstanding amount remaining with the accused

in the light of the compromise, appellant has prayed to allow the application and set aside the order of the Trial Court.

(5) The original complainant and his advocate as well as advocate with the appellant have remained present and as per the say of the complainant, the dispute is settled between the parties. Hence, it is prayed to pass necessary order accordingly.

(6) As regarding Sec. 147 of Negotiable Instruments Act is concerned,

it is amended provision which came into effect from 6th February 2003 and provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under Negotiable Instruments Act would be compoundable. As regarding it can be said that non-obstante clause, it given overriding effect over the Code and in view of the clear mandate given to the parties, the offence U/s. 138 of Negotiable Instruments Act has been made compoundable.

Now, it is the fact that the accused has been convicted by the Trial Court and the criminal appeal is filed. As such whether compromise can be made at the appellate stage of the proceedings as it was held in the case

K. M. Ibrahim V/s. K. P. Mohmmmed and Anr., reported in 2010(2) GLR 1049, wherein it is observed in paragraph -12 "it is true that the application under Sec. 147 of the Negotiable Instruments Act was made by the parties after the proceedings and had been concluded before the Appellate Forum. However, Sec. 147 of the aforesaid Act does not bar the parties from compounding an offence under Sec. 138 even at the appellate stage of the proceedings. So, there is no reason to reject the application under

under Sec. 147 of the aforesaid Act even in the proceeding under Art. 136 of the constitution.

- (7) Now perusing the citations on hand, it is the case in which the appellant was convicted by the Chief Judicial Magistrate, Kasargode and the conviction was upheld in the Appellate Court, only sentence was reduced, the said order was again challenged before the Hon'ble High Court by way of revision which was dismissed and as said appeal was filed before the Hon'ble Apex Court and parties came to compromise and so it was held there is no bar to the party from compoundable offence U/s. 138, even at the appellate stage and referring to the cases and in view held in

- (1) Anil Kumar Haritwal V/s. Alka Gupta, 2004(4) SCC 366;*
- (2) B.C. Seshadri V/s. B. N. Suryanarayana Rao, 2004(11) SCC 510 decided by a three Judge Bench;*
- (3) G. Sivarajan V/s. Little Flower Kuries & Enterprises Ltd., 2004(11) SCC 400;*
- (4) Kishore Kumar V/s. J. K. Corporation Ltd., 2004(13) SCC 494;*
- (5) Sailesh Shyam Parsekar V/s. Baban, 2005 (4) SCC 162;*
- (6) K. Gyansagar V/s. Ganesh Gupta, 2005 (7) SCC 54;*
- (7) K.J.B.L. Rama Reddy V/s. Annapuna Seeds, 2005(10) SCC 632;*
- (8) Sayeed Ishaque Menon V/s. Ansari Naseer Ahmed, 2005(12) SCC 140;*
- (9) Vinay Devanna Nayak V/s. Ryot Sewa Sahakari Bank Ltd., 2008(2) SCC 305 and*
- (10) Sudheer Kumar V/s. Mankkandi M. K. Kunhiraman, 2008 (1) KLJ 2003.*

It has been observed in paragraph – 8

“The golden thread in all these decisions in that once a person is allowed to compound a case as provided for under Sec. 147 of the Negotiable Instruments Act, the conviction under Sec. 138 of the said Act should also be set aside. In the case of Vinay Devanna Nayak (2008(2) SCC 305), the issue was raised and after taking note of the provisions of Sec. 320, Cr.P.C., this Court held that since the matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of the conviction and sentence recorded by all the Courts were set aside and the appellant was acquitted of the charge levelled against him.”

- (8) In view of the compromise between the parties vide pursis Exh. 14 & application filed by the appellant/original accused vide Exh. 15 and in the light of the guidelines issued by the Hon'ble Apex Court, I pass the following final order in the interest of justice.

ORDER

1. The Criminal Appeal No. 137 of 2023 is hereby **allowed** on merits.
2. The Judgment and Order dated 12-04-2023 passed by the Ld. Trial Court in Criminal Case No. 2308 of 2017 is hereby set aside.
3. The appellant/accused, is hereby acquitted from the charges against him.
4. The earlier Bail Bond is still continued, in terms of section 437A which will remain in force for a period of six months for the purpose of Appeal against this order.

5. Copy of this order to be given to the appellant/accused.
6. Copy of this order along with R&P, be sent to the Trial Court.

Signed and pronounced in the open Court, today
on this 09th day of December, 2023.

Date : 09-12-2023.

[Prakashkumar Pratapji Purohit]
7th Addl. Sessions Judge,
Ahmedabad[Rural] at, Navarangpura.
GJ00685