

Presented On	31-07-2009
Registered On	31-07-2009
Decided On	15-07-2021
Duration	Year - Months - Days
	11 - 11 - 14

BEFORE THE SESSIONS JUDGE, MAHESANA

Criminal Appeal No. 81/2009

Exh.:61

Patel Rakeshkumar Jivanlal

Age : 33 years, Occ. :- Business

Res.: A/12, Green City Flats,

Nr. Holi Chakla, Asarva

Ahmedabad

Appellant.....

Versus

[1] Patel Pankajkumar Dwarkabhai

Age : Adult, Occ. :- Business

Res.: 21, Ranjua Nagar Society,

Modhera Road, Opp. FICC Godown,

Mahesana.

[2] The State Of Gujarat

Respondents.....

Subject:- Appeal U/s 374 Of Criminal Procedure Code-1973

Ld. A. for the Appellant	:	Mr. H.K.Tindwani
Ld. A. for Respondent No. 1	:	Mr. S.M.Kotai
Addl. P.P. for Respondent No. 2	:	Mr. S.R.Patel

// JUDGEMENT //

- (1)... Present appeal is file by the appellant namely, Patel Rakeshkumar Jivanlal U/s 374 of Cr.P.Code.
- (2)... Appeal came to be registered and notice issued to the opponents.
- (3)... On behalf of appellant Ld. Advocate Mr. H.K. Tindwani, On behalf of opponent no.1 (Original Complainant) Ld. Advocate Mr. S.M.Kotai & On behalf of Opponent No. 2 The State Ld. Addl. P.P. Mr. S.R. Patel have appeared.
- (4)... Along with the appeal, appellant had filed stay application vide Exh.-5 therefore, having heard both the sides, implantation of impugned order was stayed and appellant was released on bail.
- (5)... **Short facts giving rise to present appeal are as under:-**

Appellant was accused in C.C.No. 15/08 which was registered by opp. no. 1 as a complainant before the court of Ld. J.M.F.C., Mahesana U/s 138 of The Negotiable Instrument Act, 1881. After completion of trial Ld. Trial Court has convicted the appellant for the offence U/s 138 r/w 142 of N.I.Act and sentenced to suffer six months simple imprisonment and imposed fine of Rs. 5,000/-, I/d to suffer two months simple imprisonment. Further, Ld. Trial Court has directed to pay sum of Rs. 2,00,000/- as

compensation U/s 357(3) of Cr.P.Code to the complainant. The impugned order is pronounced on 06.07.2009. Being aggrieved and dissatisfied with the order original accused has filed present appeal before this court.

(6)... On perusal of record it reveals that when appeal was taken up for hearing at that time appellant had filed one application vide Exh.-47 and requested this court to remand the matter to the Trial Court for recording fresh F.S. U/s 313 of Cr.P.C. That application was rejected by my Ld. Predecessor in office. Against that order appellant approached The Hon'ble Gujarat High Court by way of filing Cr. Revision Application No. 8/15. In which Hon'ble High Court at first instance pleased to pass following order:

"Rule, returnable on 07th July 2015. Ld. Addl. Public Prosecutor Mr. K.P. Raval waives service of notice of Rule on behalf of the respondent no. 1-State. Ld. Advocate Mr. Kamlesh S. Kotai waives service of notice of Rule on behalf of the respondent no. 2.

*By way of ad-interim relief it is directed that there shall be no further proceedings before the court below till the **next date.**"*

Above order is passed by the Hon'ble High Court on 28.04.2015 .

(7)... On perusal of recorded it reveals that this matter is almost 11 years old and no stay extension order produced by the appellant till date, therefore, this court has insisted for hearing of the appeal. Ld. Advocate for the appellant had requested this court by way of filing application vide Exh.-52 for furnishing status report of the above said application, which is pending before the Hon'ble High Court and this court had granted 10 days time but Ld. Advocate for the appellant is unable to produced stay extension order. The status report which is produced suggests the next date of hearing of the said application was 06.06.2016. Thereafter, what happened before the Hon'ble High Court, nothing is brought before this court by the appellant. However, to secure the ends of justice this court has granted several dates from 13.11.2021 till today but Ld. Advocate for the appellant has not produced latest status report or stay extension order. It reveals from record that Ld. Advocate Mr.S.M.Kotai for the original complainant (Respondent no.1) had filed application vide Exh.-55 on 06.03.2021 and declared that no stay is existing till date. This application is seen by the Ld. Advocate for the appellant. Thereafter, Ld. Advocate for the appellant Mr.H.K.Tindwani had asked for short adjournment by filing application vide Exh.-56 and this court has granted time but appellant was not present therefore, Bailable Warrant was issued. Thereafter, Ld. Advocate for the appellant had

again requested for the adjournment by filing application vide Exh.-58 (Dt. 03.04.2021) which was opposed by the other side therefore, by passing speaking order this court has again issued Bailable Warrant against appellant. Thus, the matter stand adjourned. It reveals from the record that Bailable Warrant did not return executed or un-executed therefore, on application filed by Ld. Addl.P.P. vide Exh.-59 (Dt. 08.06.2021) again Bailable Warrant against appellant was issued and a request letter written to the Commissioner of Police, Ahmedabad for execution of the warrant. But unfortunately warrant returned un-executed on or about 07.07.2021.

(8)... At this juncture it is apt to note that initially Hon'ble High Court had grand stay, as discussed earlier and it was existing for the next date. But till date appellant has not produced latest status report nor stay extension order of his matter which is filed by him before the Guj. H.C. In the circumstances I have resorted to a judgment of Hon'ble Supreme Court delivered in the case of ***Asian Resurfacing Of Road Agency Pvt. Ltd. Vs. CBI (Civil Misc. Appli. No. 1577/2020 Dtd. 15.10.2020)***. In para 35 of this judgment Hon'ble Supreme Court has directed all the courts in following terms :-

“35. x x x In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases

*where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of **six months** from today unless in exceptional case by speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. x x x”.*

Therefore, considering the direction of Hon'ble Supreme Court herein the case no stay extension order of Hon'ble Gujarat High Court is produced by the appellant, it is believed that no stay is presently operating or existing.

(9)... Thereafter, matter was kept today. Several call outs made but neither appellant nor his Ld. Advocate remained present. While on behalf of resp.no. 1 Ld. Advocate Mr.S.M.Kotai and on behalf of resp.no. 2 Ld. Addl.P.P. Mr. S.R.Patel remained present and they have forcefully requested to dismiss the appeal.

(10)... On perusal of proceedings it reveals that from last 3 consecutive dates Ld. Advocate for the appellant has not cared to remain present nor appellant appeared nor the warrant executed on appellant therefore, it is absolutely clear that appellant is not interested in carry out the proceedings of present appeal. On perusal of proceedings it reveals that the appellant has not remain present since very long period therefore, it is believable that appellant has no

interest in present appeal. In the circumstances, I have considered following judgments of Hon'ble Gujarat High Court.

- (1) Mahendra Bhogilal Tadvī Vs. State Of Gujarat
(2008 (3) GLH 622)
- (2) Niraj Devnarayana Shukla Vs. State Of Gujarat
(2015 (3) GLR 2442)
- (3) Cri. Appeal No. 1377/07 (D/O 12.03.2019) (Guj.
High Court)
Dilip Gambhir Lalji Vs. State Of Gujarat.
- (4) Hasmukh Devre Vs. State of Gujarat
(2009 (2) GLR page 984)

I have respectfully gone through the above judgments. Hon'ble Gujarat High Court has categorically held that in a conviction appeal when accused (appellant) is not traceable then appeal should be dismissed without going into the merits of the case. Therefore, considering the above law, here in the case appellant is not traceable and his Ld. Advocate is not interested in carry out the appeal proceedings therefore, present appeal requires to be dismissed.

- (11)... For the foregoing reasons and considering the above facts and circumstances more particularly when appellant is not traceable therefore, appeal is requires to be dismissed without going into the merits of the case. Hence, I pass the following final order.

// ORDER //

- Appeal Preferred by the appellant namely, **Patel Rakeshkumar Jivanlal** U/s 374 of Cr.P.Code is hereby dismissed, without going into the merits of the matter.
- R & P of Ld. Trial Court be sent back along with copy of this order imminently.
- The Ld. Trial Court shall issue an open arrest warrant against accused (appellant).
- Yadi accordingly.

Order Dictated, Pronounced and signed in the open court today on **15th July, 2021** at Mahesana.

Date:- 15-07-2021
Place:- Mahesana

(P.G.GOKANI)
Sessions Judge
Mahesana
(GJ-00132)