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Decided on : 06.12.2022
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**IN THE COURT OF 3rd ADDITIONAL DISTRICT JUDGE OF NAVSARI
AT NAVSARI**

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Criminal Appeal No. 47 / 2022

Exh. 11

Nimesh Vinodbhai Patel,
Age : 32 yrs., Occ. Service,
Resi. At 1589, Vallabh Wadi, B/h. Panchvati Building,
Nr. Technical School, Tal.&Dist. Navsari.

... ... **Appellant
(Orig. Accused)**

Versus

[1] Vipulbhai Kanjibhai Rabari,
Age : 30 yrs., Occ. Business,
Resi. At B-106, Royalpark Society, Vijalpore,
Tal.&Dist. Navsari.

(Orig. Complainant)

[2] State of Gujarat,

... ... **Respondents**

-: APPEARANCE :-

Ld. Adv., Mr. S.R. Modi for the Appellant

Ld. Adv., Mr. D.S. Tailor for the Respondent No.1

Ld. APP, Mr. B.D. Rathod for the Respondent No.2

An Appeal u/s.374 of the Code of Criminal Procedure against the judgment and

order of conviction and sentence passed by the Ld. 2nd Additional Chief Judicial Magistrate, Navsari in Criminal Case No.6382/2019, dated 07.09.2022 whereby the accused was convicted for the offence punishable u/s.138 of the Negotiable Instruments Act.

-: JUDGMENT :-

- (1) This Criminal Appeal u/s.374 of Cr.P.C. challenges judgment and order of conviction and sentence dated 07.09.2022 passed in Criminal Case No.6382/2019, whereby Ld. 2nd Addl. Chief Judicial Magistrate, Navsari has convicted present appellant-accused for the offence punishable u/s.138 of the Negotiable Instruments Act, 1881 (for short "the Act") and imposed simple imprisonment of two years and directed to pay amount of cheque Rs.4,00,000/- towards compensation to the complainant within two months and in default of payment of compensation imposed simple imprisonment of six months. The Ld. Trial Court has further directed to accused that the double amount of cheque Rs.8,00,000/- towards fine deposited in the court and in default of payment of fine imposed simple imprisonment of six months.
- (2) On filing of this appeal, this Court has kept in abeyance the order passed by the Ld. Trial Court till final disposal of the appeal by allowing application filed at Exh.4.
- (3) During hearing of the present appeal parties have started negotiations outside the Court and started to reach at the point of compromise in respect of the amount involved in returned un-paid cheque.
- (4) In pursuance of negotiation going on between the parties, both appellant and respondent no.1 have declared vide pursis **Exh.9** that they have amicably settled the dispute and the complainant has received the cheque

amount from appellant. Since parties have reached to the amicable settlement and compromise in regard to amount of cheque outside the Court and respondent no.1 herein has declared that he does not want to prosecute further with present appeal and he is compounding offence against the accused and request this Court to pass necessary order.

- (5) Section-147 of the Act recognizes compounding of offence at any stage of the proceeding. In the present case, since complainant and accused, who clearly submit by way pursis at **Exh.9** that they have amicably settled the dispute and do not want to prosecute further with the subject matter. It appears that the matter has been settled as a result of positive attitude of the parties. Therefore, now nothing remains to be done in present appeal and appellant is required to be set to liberty, if not required for any other purpose. Hon'ble Supreme Court in case of **Madhya Pradesh State Legal Services Authority Vs. Prateek Jain & Anr. reported in [2014] 0 Supreme (SC) 658** has held that, the requirement of following the guidelines contained in Damodar S. Prabhu (supra) should normally not be dispensed with, however, if there is a special/specific reason to deviate therefrom, the Court is not remediless as Damodar S. Prabhu (supra) itself has given discretion to the concerned Court to reduce the costs with regard to specific facts and circumstances of the case, while recording reasons in writing about such variance. Therefore, in those matters where the case has to be decided/settled in the Lok Adalat, if the Court finds that it is a result of positive attitude of the parties, in such appropriate cases, the Court can always reduce the costs by imposing minimal costs or even waive the same.
- (6) For the foregoing reason, I pass following order :

-: ORDER :-

1. In event of compounding of offence at the instance of original complainant-respondent no.1, present appeal succeeds.
2. The judgment and order of conviction and sentence delivered in Criminal Case No.6382/2019 dated 07.09.2022 by the Ld. 2nd Addl. Chief Judicial Magistrate, Navsari, is hereby quashed and set aside, consequent thereto, present appellant-accused Nimesh Vinodbhai Patel is acquitted of the charge leveled against his in Criminal Case and further, he is set to liberty, if not required for any other offence.
3. The bail bond taken during the pendency of appeal stands discharged.
4. Since in present case acquittal is made upon compounding of offence, no likelihood of order to be carried to challenge and hence there is no requirement of taking personal bond and surety u/s.436(A) of Cr.P.C.
5. Record and Proceeding of the Criminal Case be sent back to the Ld. Trial Court along with copy of this judgment.

Signed and pronounced in the open court today on 06th December - 2022
at Navsari.

Date : 06.12.2022
Place: Navsari.

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Sd/-
[Aarti Rajendra Desai]
3rd Additional District & Sessions Judge,
Navsari.
UID. No.GJ 00703