

GJSK180010672022



ORDER BELOW EXH. 1 IN CRIMINAL APPEAL NO.157/2022
(Nayi Alpeshkumar Narayanbhai Vs. Patel Mahendrakumar Dahyabhai & Other)

- 1) The appellant – original accused and the respondent-original complainant have compromised the matter in the “Permanent Lok-Adalat” held on 07/01/2023. The complainant have filed the compromise pursis vide **Ex.10** which is recorded by this Court.
- 2) The respondent had filed a complaint under Section 138 of Negotiable Instrument Act, 1881 against the appellant which was registered as Criminal Case No.385/2017. The learned Additional Chief Judicial Magistrate, Idar vide judgment and order dated 03-12-2021 held the appellant-accused guilty for the offence punishable under Section 138 of the N.I. Act and imposed simple punishment of one year as well as ordered to deposit double amount of cheque i.e. Rs.8,00,000/- as a compensation and ordered to pay the cheque amount to the complainant with interest @ 9% p.a. from the date of dishonored cheque to till the order date from that amount and if he failed to pay the compensation amount, then he has to undergo three months more simple imprisonment. Being aggrieved with the judgment and order, the appellant-accused has preferred the present appeal.
- 3) During the pendency of the said appeal, the original complainant-respondent and the original accused-appellant have filed joint compromise pursis at **Ex.10**

before this Court and requested to acquit the accused for the offence under Section 138 of the N.I. Act.

- 4) Section 147 of the Negotiable Instrument Act, 1881 provides compounding of the offence at any stage. Section 147 reproduced as under:

“147. Offences to be compounded:- Notwithstanding anything contained in the Code of Criminal Procedure Code, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.”

- 5) As the original complainant and the accused have compromised the matter in the “Permanent Lok-Adalat” held on 07/01/2023, under Section 147 of the N.I. Act, the compromise pursis is recorded. Section 147 of the Act permits compounding of such offences.
- 6) The instant matter is related to the appeal filed against the conviction order passed under Section 138 of N.I. Act. As per the guidelines contained in the judgment in the case of **Damodar s. Prabhu V. Sayed Babalal H., (2010) 5 SCC 663**, the accused will be required to pay 15% amount of the cheque for compounding of matter at appellate stage. However, the appellant-accused has stated that he has already paid full and final amount of cheque amount to the complainant. The appellant states that his economical condition is not well now. Therefore, he has urged to impose the less cost/penalty. So, looking to the age and condition of the appellant and also considering the plausible case made out by the appellant-accused for lenient view, it would be desirable to direct the appellant-accused to deposit Rs.1,000/- as costs before the Taluka Legal Services Authority, Idar for compounding of matter, in view of the decision of the Hon'ble Supreme Court in the case of **Madhya Pradesh**

State Legal Services Authority V. Prateek Jain and others [Civil Appeal No. 8614 of 2014].

- 7) In view of the above, the following order is passed in the interest of justice.

:: O R D E R ::

- In view of the compromise pursis vide **Ex.10** the present Criminal Appeal stands disposed of and the appellant accused is hereby acquitted as the matter is compounded. The conviction imposed on the accused stand annulled, subject to deposit the amount of **Rs.1,000/- (Rupees One Thousand Only)** by the appellant-accused by way of cost with the Taluka Legal Service Authority, Idar.
- copy of this order be sent forthwith to the concerned trial court for information.

Signed and pronounced in open court in **Permanent Lok Adalat** today on this 07th January, 2023.

(Sawaisingh Mohansingh Rajpurohit)
GJ00544
2nd Additional Sessions Judge
Sabarkantha @Idar.

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