IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 8437 of 2023
In R/CRIMINAL APPEAL NO. 1050 of 2023
With
R/CRIMINAL APPEAL NO. 1050 of 2023

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SHREEJI PRINTS PVT. LTD. THRO NEERAJSINGH S/O ASHOKKUMAR SINGH
Versus
STATE OF GUJARAT

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Appearance:
MR P P MAJMUDAR(5284) for the Applicant(s) No. 1
MR HARDIK A DAVE(3764) for the Respondent(s) No. 2,3
MS MONALI BHATT APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Date : 10/01/2024

ORAL ORDER

<u>ORDER IN CRIMINAL MISC. APPLICATION:</u>

1. This is an application by the applicant – original complainant under Section 378(4) of the Code of Criminal Procedure, 1973, seeking leave of this Court to present an appeal against the judgment and order of acquittal, passed by the learned Special Judge, N.I. Act Court, Surat dated 02.03.2023 in Criminal Case No.53166 of 2018.

2. Heard, learned advocates appearing for respective parties and perused the impugned judgment and order of the trial Court.

3. Learned advocate Mr.P.P. Majmudar submits that the learned trial Court erred in acquitting the respondent – accused on the ground of time barred debt. The learned advocate submits that it

was held by the learned trial Court that the cheque was issued for the dues of 29.12.2014 to 01.08.2015. The cheque was issued after three years i.e. on 18.08.2018. The learned advocate relies on Section 18 of the Limitation Act, which provides that if the debt is acknowledged by the respondent – accused, then the limitation period would start from that date. Section 18 is reproduced hereinbelow:-

> "18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.
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> (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.
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> Explanation.—For the purposes of this section,—
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> (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,
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> (b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and
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> (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

4. The learned advocate submits that while issuing the cheque, the respondent – accused had acknowledged the debt and

therefore, the limitation period cannot be said to have been started from the year 2015.

5. The learned advocate relies on the decision rendered by the Hon'ble Apex Court in the case of S. Natarajan v/s. Sama Dharman and another reported in (2021) 6 SCC 413. Para 8 of the said decision reproduced hereinbelow:-

> "8. In this connection, we may usefully refer to a judgment of this Court in A.V. Murthy v. B.S. Nagabasavanna where the accused had alleged that the cheque issued by him in favour of the complainant in respect of sum advanced to the accused by the complainant four years ago was dishonoured by the bank for the reasons "account closed". The Magistrate had issued summons to the accused. The Sessions Court quashed the proceedings on the ground that the alleged debt was barred by limitation at the time of issuance of cheque and, therefore, there was no legally enforceable debt or liability against the accused under the Explanation to Section 138 of the NI Act and, therefore, the complaint was not maintainable. While dealing with the challenge to this order, this Court observed that under Section 118 of the NI Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. This Court further observed that Section 139 of the NI Act specifically notes that it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of the NI Act for discharge, in whole or in part, of any debt or other liability. This Court further observed that under sub-Section (3) of Section 25 of the Contract Act, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Referring to the facts before it, this Court observed that the complainant therein had submitted his balance sheet, prepared for every year subsequent to the loan advanced by the complainant and had shown the amount as deposits from friends. This Court noticed that the relevant balance sheet is also produced in the Court. This Court observed that if the amount borrowed by the accused therein is shown in the balance sheet, it

> may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made. After highlighting further facts of the case, this Court held that at this stage of proceedings, to say that the cheque drawn by the accused was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous. In the circumstances, this Court set aside the order passed by the High Court upholding the Sessions Court's order quashing the entire proceedings on the ground that the debt or liability is barred by limitation and, hence, the complaint was not maintainable. It is, therefore, clear that the contention urged by the appellant herein can be examined only during trial since it involves examination of facts."

6. The learned advocate submits that the learned trial Court had committed error in acquitting the respondent – accused on that ground. The learned advocate further submits that the signature on the cheque was not disputed neither issuance of the cheque was disputed. However, bare defense, which was raised with regard to the security cheque, was accepted by the learned trial Court without proving the same by creating the circumstances during the cross-examination or proving the same by independent evidence. The learned advocate submits that though the presumption under Sections 118 and 139 of the Negotiable Instruments Act was not rebutted by the respondent – accused, the learned trial Court had acquitted the respondent – accused from the charges.

7. Considering the avernments made in the application and submissions made by the learned advocates appearing for the respective parties, this Court finds that there is some arguable case in favour of the applicant, therefore, leave, as prayed for, is granted. This application is allowed.

<u>ORDER IN CRIMINAL APPEAL:</u>

1. The appeal is ***admitted***. Learned APP waives service of notice

of admission on behalf of respondent – State.

2. Issue bailable warrant in the sum of Rs.5,000/- (Rupees Five Thousand only) against the respondent – original accused.

3. The Record and Proceedings be sent back to the concerned Court so that the paper book can be prepared by the concerned Court and be sent again to this Court.

(M. K. THAKKER,J)

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