**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL REVISION APPLICATION NO. 472 of 2020**

**With**
**CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2020**
**In R/CRIMINAL REVISION APPLICATION NO. 472 of 2020**

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INDRAVADAN VAJESINH DARBAR
Versus
STATE OF GUJARAT

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Appearance:
MR HR PRAJAPATI(674) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MS. M.H. BHATT, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE B.N. KARIA**

**Date : 25/08/2020**

**ORAL ORDER**

**ORDER IN CRIMINAL REVISION APPLICATION:**

Learned advocate for the applicant submits that he has made an inquiry with the applicant about depositing any tax amount, but he is not in a position to deposit any amount of tax.

By way of present application, the applicant has challenged the impugned judgment and order dated 10.07.2020 passed by the learned Additional Sessions Judge, Court No.4, City Civil and Sessions Court, Bhadra, Ahmedabad in Criminal Appeal No.403 of 2018 as well as judgment and order dated 26.06.2018 passed by the learned Additional Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No.200047 of 2008.

Heard learned advocate for the applicant.

It is submitted by learned advocate for the applicant that both the courts below have committed an error in recording findings against the applicant as they are based on no evidence and materials and/or misreading and misinterpreting the materials on record. It is further submitted that the courts below have committed an error in holding that the complainant is a formal witness, and therefore, non-examination of complainant did not fatal to the prosecution case. It is further submitted that the courts below have committed an error in accepting the documents produced at serial Nos.2 to 5 and 9 to 12 are secondary evidences under Section 279(b) of Income Tax Act r/w. Section 63(3) of the Indian Evidence Act. That, both the courts below ought not to have considered secondary evidences as they were not admissible in evidence under the Evidence Act.

Issue requires consideration.

***Rule*** returnable on 22.09.2020. Learned APP waives service of notice of rule for and on behalf of respondent-State.

**ORDER IN CRIMINAL MISC. APPLICATION:**

Heard learned advocate for the applicant.

It is submitted by learned advocate for the applicant that both the courts below have committed an error in recording findings against the applicant as they are based on no evidence and materials and/or misreading and misinterpreting the materials on record. It is further submitted that the courts below have committed an error in holding that the complainant is a formal witness, and therefore, non-examination of complainant did not fatal to the prosecution case. It is further submitted that the courts below have committed an error in accepting the documents produced at serial Nos.2 to 5 and 9 to 12 are secondary evidences under Section 279(b) of Income Tax Act r/w. Section 63(3) of the Indian Evidence Act. That, both the courts below ought not to have considered secondary evidences as they were not admissible in evidence under the Evidence Act. It was submitted by learned advocate for the applicant to stay the execution and implementation of the impugned judgments and orders.

***Rule*** returnable on 22.09.2020. Learned APP waives service of notice of rule for and on behalf of respondent-State.

**(B.N. KARIA, J)**

MARY VADAKKAN