

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 7429 of 2017**

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K.S. & CO. THROUGH SAKABHAI @ SANKABHAI PRABHATBHAI DESAI
Versus
STATE OF GUJARAT & 1 other(s)

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Appearance:

MR PRATIK Y JASANI(5325) for the Applicant(s) No. 1
HCLS COMMITTEE(4998) for the Respondent(s) No. 2
MR. MANOJ T DANAK(6264) for the Respondent(s) No. 2
PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE A.S. SUPEHIA**Date : 01/07/2019****ORAL ORDER**

1. The present petition is called out twice. Learned advocate Mr. Pratik Jasani for the petitioner is present before this Court but learned advocate Mr. Danak for respondent No. 2 has chosen not to appear before this Court.

2. Learned advocate Mr. Jasani has submitted that the impugned FIR is required to be quashed and set aside since the order passed by the trial court by asking him to produce the copy of the Income Tax Returns having no nexus to the offence under Section 138 of the Negotiable Instruments Act, 1881. It is submitted by him that the petitioner had already produced the cheque, which was issued by the respondent No.2 and the petitioner had also produced the dishonoured memo as well as the demand notice issued by the petitioner to the respondent No. 2. It is submitted by him that the above referred documents have been already on record and hence, there was no other requirement for

production of the Income Tax Return for deciding the offence in question. It is submitted by the learned advocate for the petitioner that the petitioner had produced the bank details as well as the relevant extracts from the books of account maintained by the petitioner wherein the entry so far as the respondent no. 2 is concerned, is reflected.

3. Further, it is asserted by the learned advocate that the petitioner had categorically stated in his objection that the contract of loan along with promissory note and the certificate of RTO are produced on record by the petitioner, which clearly demonstrate that the respondent No. 2 had availed loan from the petitioner. Thus, it is submitted that the aforementioned facts are not appreciated by the trial Court in its true perspective. It is submitted by the learned advocate for the petitioner that the trial court is insisting for further hearing of the trial.

4. Under the circumstance, issue **Rule**. In the meantime, during the pendency, final hearing and final disposal of this petition, operation, execution and implementation of the impugned order dated 29.05.2017 passed by 7th Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Jamnagar, below exhibit-80 in Criminal Case No. 3098 of 2013 is stayed. Direct service is permitted.

Sd/-
(A. S. SUPEHIA, J)

VISHAL MISHRA