

Rajeshbhai Muljibhai Patel vs The State Of Gujarat on 10 February, 2020

Equivalent citations: AIR 2020 SUPREME COURT 818, AIR ONLINE 2020 SC 815, AIR ONLINE 2020 SC 167 (2020) 3 SCALE 343, (2020) 3 SCALE 343

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Bench: A.S. Bopanna, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 251-252 OF 2020
(Arising out of SLP(Crl.) Nos.142-143 of 2019)

RAJESHBHAI MULJIBHAI PATEL
AND OTHERS ETC.

...Appellant

VERSUS

STATE OF GUJARAT AND ANOTHER ETC.

...Respondent

JUDGMENT

R. BANUMATHI, J.

Leave granted.

2. These appeals arise out of the impugned judgment dated 14.12.2018 passed by the High Court of Gujarat at Ahmedabad dismissing Criminal Misc. Application No.2735/2017 thereby declining to quash the FIR No.I-194/2016. By the same order, the High Court has allowed Criminal Misc. Application No.24588 of 2017 and quashed the criminal case in C.C.No.367/2016 filed by appellant No.3-Hashmukhbhai Ravjibhai Patel against accused Yogeshbhai Muljibhai Patel under Section 138 of N.I. Act.

3. Brief facts which led to the filing of these appeals are as under:-

Appellant No.1-Rajeshbhai Muljibhai Patel is the real brother of Yogeshbhai Muljibhai Patel who is the accused in C.C.No.367/2016 filed under Section 138 of N.I. Act by appellant No.3-Hashmukhbhai Ravjibhai Patel. Both appellant No.1-Rajeshbhai and his brother Yogeshbhai are stated to be residents of United Kingdom. In this appeal, appellant No.1-Rajeshbhai is represented through his Power of

Attorney holder-appellant No.2- Vipulkumar Hasmukhbhai Patel.
Respondent-Yogeshbhai is represented through his Power of Attorney holder-another respondent-Mahendrakumar Javaharbhai Patel.

4. On 08.12.2015, appellant No.3-Hasmukhbhai Ravjibhai Patel filed a criminal case being C.C.No.367/2016 against accused Yogeshbhai under Section 138 of N.I. Act. The father of appellant No.1-Rajeshbhai and Yogeshbhai had agricultural lands bearing Block/Survey Nos.534, 536/1/A, 536/1/B, 538, 539, 540, 541/1, 542 and 543 situated at Village Fofaliya, Ta. Dabhoi, District Vadodara. In 2010, in order to sell his father's land, Yogeshbhai called up appellant No.3 who is also the maternal uncle of Yogeshbhai and Rajeshbhai. Since appellant No.3 was also planning of buying some agricultural land from the surplus funds which he has received from the sale of his agricultural land, he accepted the proposal of Yogeshbhai. Yogeshbhai who is residing in United Kingdom showed his intention to come to India for executing the sale deed of his lands in favour of appellant No.3 and asked to pay the money to respondent No.2-Mahendrakumar Javaharbhai Patel. Accordingly, appellant No.3 gave Rs.30,00,000/- each on four days viz. 21.08.2010, 22.08.2010, 26.08.2010 and 28.08.2010 as part payment, the total amounting to Rs.1,20,00,000/- to respondent No.2-Mahendrakumar, who issued receipts for the said payments of amount for and on behalf of accused Yogeshbhai. In 2015, accused Yogeshbhai came to India and arranged meeting with appellant No.3. In the meeting, Yogeshbhai informed appellant No.3 that he has already executed a registered Sale Deed No.1229/2013 dated 16.07.2013 in favour of one M/s Brentwood Industries India Pvt. Ltd. thereby, selling the above referred lands to that company which was agreed to be sold to appellant No.3.

5. Knowing all these facts, appellant No.3 demanded his legal outstanding debt from Yogeshbhai immediately i.e. total of Rs.1,20,00,000/- and Yogeshbhai promised to refund the amount by issuing four cheques each of Rs.30,00,000/- each in favour of appellant No.3. Accordingly, accused Yogeshbhai issued cheques bearing Nos.8108 and 8109 of NRO Account No.08540107512 on 12.10.2015 and cheque Nos.20801 and 20802 of NRE Account No.085401000566 on 30.10.2015. As per appellant No.3, at the time of issuance of cheques, Yogeshbhai gave assurance of the clearance of above cheques.

6. Two cheques bearing Nos.8108 and 8109 dated 12.10.2015 of NRO Account No.08540107512 amounting to Rs.30,00,000/- each were dishonoured on the same day i.e. on 12.10.2015 on the ground of "Payment stopped by the Drawer". The third cheque was of NRE Account No.085401000566 with cheque bearing No.20801 dated 30.10.2015 amounting to Rs.30,00,000/- and the fourth cheque was also of NRE Account No.085401000566 with cheque bearing No.20802 dated 30.10.2015 amounting to Rs.30,00,000/-. When those two cheques drawn on NRE Account No.085401000566 were presented before the Bank on the same day i.e. on 30.10.2015, those cheques were also returned on the same day with the endorsement "Payment stopped by the Drawer". Thereafter, appellant No.3 sent a legal notice to Yogeshbhai on 17.11.2015 demanding payment of money which notice was delivered on 23.11.2015.

7. Insofar as dishonor of cheques bearing Nos.8108 and 8109 dated 12.10.2015 of NRO Account No.08540107512, they were returned unpaid on 12.10.2015. The Complainant issued notice on

17.11.2015 and therefore, claim qua the two cheque Nos.8108 and 8109 are barred by limitation under the provisions of Negotiable Instruments Act. The complaint therefore, pertains only for cheque Nos.20801 and 20802 of NRE Account No.085401000566 which were returned unpaid on 30.10.2015. Complaint under Section 138 of N.I. Act against Yogeshbhai was taken on file on 05.02.2016 in C.C.No.367/2016. On 06.09.2016, the Court of 5th Additional Civil Judge & JMFC, Bharuch issued a bailable warrant for production of accused Yogeshbhai.

8. Appellant No.3-Hasmukhbhai has filed a Special Summary Suit No.105/2015 before the Additional Chief Judicial Magistrate, Vadodara for recovery of Rs.1,20,00,000/- under Order 37 of CPC. Summary Suit No.105/2015 filed by appellant No.3 was based on the four receipts issued by respondent No.2-Mahendrakumar. The Court in that case has issued summons for appearance against Yogeshbhai and Mahendrakumar which has been served on 01.11.2015. According to the respondents, they came to know about those four receipts only after they have been served with summons in the said suit. Alleging that the appellants have forged and fabricated the four receipts, respondent No.2-Mahendrakumar has filed the complaint for cheating and forgery against the appellants. Based on the said complaint, FIR No.I-194/2016 was registered against the appellants under Sections 406, 420, 465, 467, 468, 471 and 114 IPC. Respondent No.2-Mahendrakumar has alleged that the appellants joined together and prepared fabricated receipts of Rs.1,20,00,000/- bearing forged signature of respondent No.2 and produced these forged receipts as true.

9. In the FIR, it was averred that Yogeshbhai, who is residing in United Kingdom had executed a power of attorney dated 14.03.2013 in favour of Mahendrakumar for administration of his lands. On the basis of this power of attorney, Mahendrakumar executed an Agreement to Sale in favour of one Jigneshbhai Dhanesh Chandra Shah on 16.04.2013. Thereafter, Yogeshbhai came from London and executed a registered Sale Deed No.1229/2013 dated 16.07.2013 in favour of M/s Brentwood Industries India Pvt. Ltd. for Rs.6,16,44,000/-. In the sale deed, the agreement to sale holder has signed as confirming party. In consideration of the sale deed, the land owner was to receive Rs.6,16,44,000/- and the confirming party-Jigneshbhai was to receive Rs.1,13,94,000/-. Yogeshbhai is the elder brother of appellant No.1-Rajeshbhai. Appellant No.1 had filed a Special Civil Suit No.284/2013 before the Court of Principal Civil Judge, Bharuch claiming his share in the said land sold by Yogeshbhai. In the said suit, Yogeshbhai, his mother Kanchanben, respondent No.2-Mahendrakumar and Jigneshbhai were arraigned as defendants. The said suit was compromised between appellant No.1 and Yogeshbhai in London and Yogeshbhai was to pay Rs.90,00,000/- to Rajeshbhai-appellant No.1. Appellant No.1 agreed to issue NOC and promised that his power of attorney holder-appellant No.2- Vipulkumar Hasumukhbhai Patel will issue NOC. Accordingly, Yogeshbhai had come from London and his power of attorney holder-appellant No.2-Vipulkumar had executed NOC letter in presence of Notary H.J. Zala on 23.09.2015. There was various correspondence between the parties and the company M/s Brentwood Industries India Pvt. Ltd. regarding payment of said Rs.90,00,000/-.

10. Appellants No.1 to 3 filed Criminal Misc. Application No.2735/2017 before the High Court under Section 482 Cr.P.C. for quashing of FIR No.I-194/2016. Yogeshbhai who is the accused in the criminal case being C.C.No.367/2016 also filed Criminal Misc. Application No.24588/2017 for quashing of cheque case filed against him under Section 138 of N.I. Act. Yogeshbhai claimed that he

has given the cheques to appellant No.3-Hasmukhbhai who approached him requesting for help to purchase land. Yogeshbhai alleged that the appellants have forged the receipts issued by respondent No.2-Mahendrakumar. In this regard, Yogeshbhai placed reliance upon the report of the hand-writing expert, Directorate of Forensic Science dated 15.12.2016 as per which, the disputed signatures of Mahendrakumar Javaharbhai on the receipts were not written by him i.e. respondent No.2-Mahendrakumar Javaharbhai.

11. Vide the impugned judgment dated 14.12.2018, the High Court dismissed Criminal Misc. Application No.2735/2017 and declined to quash the FIR No.I-194/2016. The High Court held that on the basis of four receipts allegedly issued by Mahendrakumar, the third appellant-Hasmukhbhai has filed the Summary Suit No.105/2015 for recovery of Rs.1,20,00,000/-. The High Court referred to the hand-writing expert's opinion who has opined that the signatures found in the receipts do not tally with the signature of respondent No.2-Mahendrakumar. The High Court held that looking into the allegations and the facts, prima facie case of forgery and cheating are made out against the appellants and accordingly, declined to quash the FIR No.I-194/2016 and dismissed Criminal Misc. Application No.2735/2017.

12. On the basis of order passed in Criminal Misc. Application No.2735/2017, the Criminal Misc. Application No.24588/2017 filed by Yogeshbhai was allowed and the criminal case in C.C.No.367/2016 filed by appellant No.3-Hasmukhbhai under Section 138 of N.I. Act was quashed. The High Court held that based on the alleged forged receipts, criminal case has been filed under Section 138 of N.I. Act and the cheque case cannot be proceeded with and accordingly, quashed the criminal case in C.C.No.367/2016 filed under Section 138 of N.I. Act. Being aggrieved, the appellants have filed these appeals.

13. Mr. D.N. Parikh, learned counsel for the appellants has submitted that the High Court has failed to appreciate that the FIR lodged by respondent No.2-Mahendrakumar is false and frivolous as the same subject matter is pending consideration in Summary Suit No.105/2015. It was submitted that at least two cases viz. Special Summary Suit No.105/2015 and criminal case in C.C.No.367/2016 filed under Section 138 of N.I. Act are pending before the competent court and while so, the criminal case could not have been registered on the four receipts which are the subject matter of the pending litigations between the parties. It was further submitted that in the Summary Suit No.105/2015, issue No.5 framed by the Court is "whether the defendant proved that the plaintiff has fabricated the forged signature illegally and created forged receipts" and the FSL report-report of the handwriting expert is filed in the said suit and the Civil Court is yet to determine the issue as to the genuineness of the receipts. Learned counsel submitted that the High Court has failed to appreciate that the opinion of the handwriting expert is relevant evidence, but it is not a conclusive evidence and Section 73 of the Indian Evidence Act empowers the Court to compare the admitted and disputed writings for the purpose of forming Court's opinion. It was contended that when the genuineness of four receipts is an issue in the civil suit and the dispute is of civil nature, the continuation of the criminal case is an abuse of process of the Court and the FIR No.I- 194/2016 is liable to be quashed. It was also contended that the High Court erred in quashing the cheque case filed under Section 138 of N.I. Act and the High Court did not keep in view that issuance of cheques by Yogeshbhai from his NRE Account has been admitted.

14. Refuting the above contentions, Ms. Aishwarya Bhati, learned Senior counsel for the respondents has submitted that appellant No.3-Hashmukhbhai is the maternal uncle of Yogeshbhai and relying upon the words of appellant No.3 and his son-appellant No.2-Vipulkumar, Yogeshbhai issued two cheques bearing Nos.8108 and 8109 for Rs.30,00,000/- each from his NRO Account and after issuing the cheques, Yogeshbhai realised that there was no funds in the said account and he asked appellant No.3 to return the above cheques and collect new cheques of another account. It was submitted that thereafter Yogeshbhai issued new cheques of NRE Account bearing Nos.20801 and 20802 of Rs.30,00,000/- each and at that time, appellant No.3 had told that he had not brought the old cheques with him and will return the old cheques in a day or two but never returned the cheques. Learned Senior counsel submitted that Yogeshbhai got suspicious and on making enquiry, he found that appellants No.2 and 3 were not intending to purchase any lands and thus, he has instructed the Bank to stop payment for all the four cheques. Learned Senior counsel further submitted that appellants made four forged receipts of Rs.30,00,000/- each by forging the signatures of respondent No.2-Mahendrakumar and the handwriting expert opined that four receipts relied upon by appellant No.3-Hashmukhbhai have not been signed by respondent No.2-Mahendrakumar and on the basis of FSL report, FIR No.I-194/2016 has been registered under Sections 406, 420, 465, 467, 468, 471 and 114 IPC. It was submitted that since there is a prima facie case of forgery and cheating made out against the appellants, the High Court rightly declined to quash the FIR and the impugned order warrants no interference.

15. We have carefully considered the submissions and perused the impugned order and other materials on record.

16. The issue relates to the alleged forgery of four receipts dated 21.08.2010, 22.08.2010, 26.08.2010 and 28.08.2010 each for a sum of Rs.30,00,000/- totalling to Rs.1,20,00,000/- issued by respondent No.2-Mahendrakumar. For the recovery of the amount of Rs.1,20,00,000/-, appellant No.3-Hashmukhbhai filed Special Summary Suit No.105/2015 in October, 2015. After receiving summons in Summary Suit No.105/2015, respondent No.2- Mahendrakumar entered appearance and filed application seeking leave to defend and the said application was allowed on 19.04.2016. On application filed by appellant No.3-Hashmukhbhai in the Summary Suit No.105/2015, four receipts were sent to Forensic Science Laboratory for obtaining the opinion of handwriting expert. The handwriting expert's report was received in the Court on 15.12.2016 to the effect that all the four receipts were not signed by respondent No.2-Mahendrakumar. It was thereafter on the complaint filed by respondent No.2, FIR No.I-194/2016 dated 28.12.2016 was registered against the appellants for the offences punishable under Sections 406, 420, 465, 467, 468, 471 and 114 IPC.

17. In C.C.No.367/2016, case of appellant No.3-Hashmukhbhai is that Yogeshbhai issued four cheques each for a sum of Rs.30,00,000/-, details of which are as under:-

S.No.	Date	Cheque No.	Account	Amount	Date of Dishonour
1.	12.10.2015	8108	NRO Account No.08540107512	Rs.30,00,000/-	12.10.2015
2.	12.10.2015	8109	NRO Account	Rs.30,00,000/-	12.10.2015

			No.08540107512			
3.	30.10.2015	20801	NRE	Account	Rs.30,00,000/-	30.10.2015
			No.085401000566			
4.	30.10.2015	20802	NRE	Account	Rs.30,00,000/-	30.10.2015
			No.085401000566			
	Total				Rs.1,20,00,000/-	

On presentation, the above cheques were dishonoured on the ground “Payment stopped by the Drawer”. After issuing the legal notice, appellant No.3-Hasmukhbhai filed criminal case in C.C.No.367/2016 on 08.12.2015 pertaining to two cheques bearing Nos.20801 and 20802. It was only thereafter, respondent No.2- Mahendrakumar had filed the criminal complaint dated 20.03.2016 and also filed another criminal complaint dated 14.04.2016 against appellant No.1-Rajeshbhai and appellant No.2-Vipulkumar. Since the police had not registered the FIR, respondent No.2 filed SCRA No.5945/2016 and SCRA No.6349/2016 before the High Court for seeking directions for lodging FIR. The High Court vide orders dated 04.10.2016 and 06.09.2016 disposed of those petitions directing the police to investigate into the matter.

18. Be that as it may, in the Summary Suit No.105/2015, leave to defend was granted to respondent No.2-Mahendrakumar on 19.04.2016. On the application filed by appellant No.3 in the said Summary Suit No.105/2015, four receipts filed in the suit were sent to the handwriting expert. The handwriting expert has opined that signatures in all the four receipts did not tally with the sample signatures which were of respondent No.2-Mahendrakumar. It was only thereafter, complaint was filed by Mahendrakumar, based on which, FIR No.I-194/2016 was registered on 28.12.2016 against the appellants for the offences punishable under Sections 406, 420, 465, 467, 468, 471 and 114 IPC. As rightly contended by the learned counsel for the appellants, in the Summary Suit No.105/2015, issue No.5 has been framed by the Court “whether the defendant proved that the plaintiff has fabricated the forged signature illegally and created forged receipts”. When the issue as to the genuineness of the receipts is pending consideration in the civil suit, in our view, the FIR ought not to have been allowed to continue as it would prejudice the interest of the parties and the stand taken by them in the civil suit.

19. It is also to be pointed out that in terms of Section 45 of the Indian Evidence Act, the opinion of handwriting expert is a relevant piece of evidence; but it is not a conclusive evidence. It is always open to the plaintiff-appellant No.3 to adduce appropriate evidence to disprove the opinion of the handwriting expert. That apart, Section 73 of the Indian Evidence Act empowers the Court to compare the admitted and disputed writings for the purpose of forming its own opinion. Based on the sole opinion of the handwriting expert, the FIR ought not to have been registered. Continuation of FIR No.I-194/2016, in our view, would amount to abuse of the process of Court and the petition filed by the appellants under Section 482 CrI.P.C. in Criminal Misc. Application No.2735/2017 to quash the FIR I-194/2016 is to be allowed.

20. The High Court, in our view, erred in quashing the criminal case in C.C.No.367/2016 filed by appellant No.3-Hasmukhbhai under Section 138 of N.I. Act. As pointed out earlier, Yogeshbhai has

admitted the issuance of cheques. When once the issuance of cheque is admitted/established, the presumption would arise under Section 139 of the N.I. Act in favour of the holder of cheque that is the complainant-appellant No.3. The nature of presumptions under Section 139 of the N.I. Act and Section 118(a) of the Indian Evidence Act are rebuttable. Yogeshbhai has of course, raised the defence that there is no illegally enforceable debt and he issued the cheques to help appellant No.3-Hasmukhbhai for purchase of lands. The burden lies upon the accused to rebut the presumption by adducing evidence. The High Court did not keep in view that until the accused discharges his burden, the presumption under Section 139 of N.I. Act will continue to remain. It is for Yogeshbhai to adduce evidence to rebut the statutory presumption. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the N.I. Act ought not to have been quashed by the High Court by taking recourse to Section 482 Cr.P.C. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the N.I. Act on the legal issues like limitation, etc. Criminal complaint filed under Section 138 of the N.I. Act against Yogeshbhai ought not have been quashed merely on the ground that there are inter se dispute between appellant No.3 and respondent No.2. Without keeping in view the statutory presumption raised under Section 139 of the N.I. Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in C.C.No.367/2016 filed under Section 138 of N.I. Act.

21. In the result, the impugned order is set aside and these appeals are allowed. Criminal Misc. Application No.2735/2017 filed by the appellants is allowed and the FIR No.I-194/2016 is quashed. Criminal Misc. Application No.24588/2017 filed by Yogeshbhai Muljibhai Patel stands dismissed. Case filed by appellant No.3- Hasmukhbhai Ravjibhai Patel under Section 138 of N.I. Act - C.C.No.367/2016 stands restored. The 5 th Additional Civil Judge & JMFC, Bharuch is directed to proceed with the case in C.C.No.367/2016 filed under Section 138 of N.I. Act and afford sufficient opportunity to both the parties and dispose the same in accordance with law. The Summary Suit No.105/2015 shall be proceeded in accordance with law without being influenced by any of the views expressed by the High Court in the impugned order.

.....J. [R. BANUMATHI]J. [A.S. BOPANNA] New Delhi;

February 10, 2020.