

Gujarat High Court

Sureshchandra vs Dhirubhai on 11 July, 2008

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CR.RA/474/2008 5/ 5 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL

REVISION APPLICATION No. 474 of 2008

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SURESHCHANDRA
NAGINDAS SHAH - Applicant(s)

Versus

DHIRUBHAI
TRIBHOVANDAS SHAH & 1 - Respondent(s)

=====

Appearance
:
MR
KUNAL S SHAH for
Applicant(s) : 1,
None for Respondent(s) : 1,
MR.KC SHAH,
ADDL.PUBLIC PROSECUTOR for Respondent(s) :
2,
=====

CORAM

:

HONOURABLE

MR.JUSTICE BANKIM.N.MEHTA

Date
: 11/07/2008

ORAL
ORDER

1. The petitioner seeks permission to place on record copy of notice dated 14.8.2006 given by respondents to petitioners. The document is ordered to be taken on record.
2. The petitioner-original complainant has preferred this Revision Application under section 397 read with Section 401 of Criminal Procedure Code, 1973 and challenged the order passed by learned Additional Sessions Judge, Fast Track Court No.6, Bharuch below Exh-26 on 18.6.2008 in Criminal Appeal No.67 of 2007.
3. The petitioner complainant lodged complaint under Section 138 of Negotiable Instruments Act. After hearing, the trial Court convicted the respondents accused and sentenced them.
4. Feeling aggrieved by the said decision, the respondents preferred Criminal Appeal No.67 of 2007 before learned Additional Sessions Judge and Fast Track Court, Bharuch. The respondents filed application Exh-26 for a direction to Nazir of the Court to accept Rs.75,000/- being the amount of cheque contending that they were prepared to pay cheque amount of Rs.75,000/- to the complainant but on account of their financial condition, could not pay the same. It is also averred in the application that the respondents accused are prepared to deposit the amount of cheque in the Court and have no objection if the said amount is paid to the complainant.
5. After hearing, the learned Additional Sessions Judge, by his impugned order, allowed the application and permitted the respondents accused to deposit the amount. Being aggrieved by the said decision, the petitioner complainant has preferred this Revision Application.
6. I have heard learned advocate Mr.B.A.Surti for learned advocate Mr.Kunal S. Shah for the petitioner.
7. It appears from the impugned order that the respondents accused showed their desire to deposit the amount of cheque in the Court and the Court permitted them to deposit the amount. Learned advocate Mr.Surti has submitted that by the impugned order petitioner is compelled to compound

the offence. The copy of the application does not indicate that the amount was sought to be deposited with a view to compel the petitioner to compound the offence. Even compounding of offence can not be unilateral. Therefore, by merely permitting the respondents accused to deposit the amount, it cannot be said that the petitioner is compelled to compound the offence. The impugned order except permitting deposit of amount does not finally decide any right of petitioner. Therefore order under challenge is an interlocutory order. In the decision of Amar Nath and others Vs. State of Haryana and others reported in AIR 1977 SCC 2185 Hon'ble Supreme Court held as under:-

The term "interlocutory order" in Section 397(2) has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2). But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

8. In view above legal proposition laid down by the Hon'ble Supreme Court, the order under challenge being interlocutory order, no Revision Application would lie. Therefore, the present application cannot be entertained.

9. It is observed in the impugned order that it is for the complainant to settle the matter or not and whether to withdraw the amount deposited in the Court. Therefore, the Court has only permitted the respondents accused to deposit the amount and has not compelled the petitioner complainant either to compound the offence or to withdraw the amount. Therefore by the impugned order, no prejudice is likely to be caused to the petitioner complainant.

10. In view of above, this application does not merit acceptance. Hence, application fails and stands dismissed.

(Bankim N. Mehta, J.) Top