

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 12899 of 2022**

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VIPANKUMAR DIRECTOR (SUSPENDED) OF K. S. M. SPINNING MILLS
LTD. & ORS.

Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR BRIJ V SHETH(10594) for the Applicant(s) No. 1,2,3,4
for the Respondent(s) No. 2,3
MS CM SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 21/02/2024

ORAL ORDER

1. By invoking extraordinary jurisdiction and inherent powers of this Court, the applicants – original accused of Criminal Case No.2839 of 2018, titled M/s. Devdeep Cotton Industries Vs. K.S.M. Spinning Mills and others filed for dishonour of cheques under Section 138 of the Negotiable Instruments Act, 1881, have preferred this application, whereby they are seeking setting aside of the order of the conviction dated 03.09.2022 passed by the Additional Chief Judicial Magistrate, Rajkot.
2. Brief facts emerge from the record are that the applicants were arraigned as accused nos.2 to 5 in the private complaint being C.C.No.2839 of 2018, filed by M/s.Devdeep Cotton Industries for the alleged dishonour of cheques issued by the company M/s.K.S.M. Spinning Mills Limited. Before the Trial Court, the summons were served upon the applicants. They also engaged the lawyer for their defence. However, before the Trial Court for

further proceedings, they avoided the trial proceedings. Despite the issuance of theailable warrant as well as arrest warrant and proceedings of proclamation, the applicants did not care to remain present before the Trial Court. The learned Trial Court by invoking Section 299 of the Code of Criminal Procedure, 1973, proceeded further and after recording the evidence of the complainant, convicted the applicants for the alleged offence of dishonour of cheques. The order of conviction was passed on 03.09.2022 by the learned 8th Additional Chief Judicial Magistrate, Rajkot. It needs to be noted that before the Trial Court, the applicants had applied for cancellation of arrest warrant and the same was refused by the Trial Court. Being aggrieved with the said order, the revision application preferred by the applicants and the same was rejected by confirming the order of the Trial Court.

3. In the aforesaid factual background, the applicants have preferred present application by invoking inherent powers of this Court *inter alia* stating that the order of the conviction has resulted into marriage of justice as the applicants have been convicted without holding a trial in their presence and the second issue raised is that the presence of the applicants might have secured by issuance of warrant or proclamation as provided under Sections 81 and 82 of the Code of Criminal Procedure, 1973 and therefore, the trial cannot be held in absence of the accused unless personal appearance is dispensed with and there cannot be dispensation of examination of the accused applicants under Section 313 of the Code of

Criminal Procedure, 1973, if incriminating evidence appears in the evidence of the complainant.

4. This Court has heard learned counsels Mr.Vishal Sharma with Mr.Brij Sheth, appearing for and on behalf of applicants herein.
5. Mr.Vishal Sharma, has submitted that the Trial Court overlooked the procedural law and straightaway convicted the applicants. The order of the conviction is passed in utter disregard to the principle of fair trial. In the facts of present case, the intention of the applicants was to defend the case and that is why after service of summons, they engaged a lawyer. However, due to impediment of the local language, time was sought for translation of entire case proceedings so as to enable them to defend the trial. The warrant upon the applicants never executed nor the proceedings under Section 82 to secure the presence of the applicants were completed. In such circumstances, there is no ground or circumstances exists to record the evidence in absence of accused and therefore, ingredients of Section 299 of the Code of Criminal Procedure, 1973 which provides recording of evidence in absence of accused are not satisfied and on this ground, the conviction order deserves to be set aside by invoking extraordinary jurisdiction of this Court as the order of the conviction is being passed in utter disregard to the principles of natural justice and fair trial which has resulted into miscarriage of justice.
6. In support of the aforesaid contentions, heavy reliance has been placed on the judgment of the Karnataka High Court

delivered in Mr.G.H. Abdul Kadri Vs. Mohammad Iqbal (2022(2) K.L.R. 575), to contend that the trial cannot be held in absence of an accused and there cannot be dispensation of examination of accused under Section 313 of the Code of Civil Procedure if the incriminating evidence appears in the evidence of the complainant.

7. Having considered the contentions raised by learned counsel for the applicants, and on perusal of the order of the conviction, the issue falls for my consideration is whether case is made out to admit the matter by exercising inherent powers of this Court.
8. It is not in dispute that the applicants were convicted by the Trial Court for the alleged dishonour of cheques under Section 138 of the N.I. Act. The applicants instead of preferring statutory appeal against the conviction, have preferred this application under Section 482 of the Code of Criminal Procedure, 1973, disputing the findings recorded for conviction.
9. The scope of Section 482 is well defined by the various judgments of the Apex Court. Inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code of Criminal Procedure, 1973 in cases where there is no express proviso empowering the High Court to achieve the said object. The powers can be exercised only to prevent the abuse of process of the Court and to secure the ends of justice.
10. In light of the settled principles and considering the peculiar facts and circumstances of the present case, this

Court is of the considered view that no case is made out to admit the matter by exercising inherent powers, as there is express and specific provisions of Cr.P.C. to prefer a statutory appeal against the conviction. In the identical issue, the Apex Court in the case of Arun Shankar Shukla Vs. State of U.P. (1999(6) SCC 146), has held that the inherent jurisdiction of the High Court not to be exercised in the matter covered by the specific provisions of the Code. It is further observed that the expressions “abuse of the process of the law” or “to secure ends of justice” do not confer unlimited jurisdiction on the High Court and the alleged abuse of process of law or to secure the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Again, the Apex Court in the case of Hamida Vs. Rashid and others (2008(1) SCC 474), has observed that the inherent powers is not to be resorted to if there is a specific provision of the Code or any other enactment for redress of grievance of the aggrieved party.

11. The applicants have heavily relied on the case of Mr.G.H. Abdul Kadri (supra) to contend that the Trial Court could not have proceeded ex-parte against the accused. The cited judgment would not rescue to the case of the applicants. In the cited judgment, the accused had challenged the conviction by way of appeal and after the order passed by the Appellate Court, the same was challenged by preferring the revision application before the High Court of Karnataka. Thus, therefore, present application has not been entertained mainly on the ground

that the specific provisions of the appeal against the conviction is there in the Code and therefore, at this stage, intervention by exercising inherent powers under Section 482 of the Code of Criminal Procedure, 1973 is not warranted.

12. For the reasons recorded, present application being devoid of any merits, at the admission stage, stands **dismissed**. It is open for the applicants to raise all the contentions by availing the appropriate remedy of the appeal.
13. The Court has not gone into the merits of the case and whatever observations made are prima facie in nature and confined to issue of the admission of present application.

(ILESH J. VORA,J)

Rakesh