

2023 SCC OnLine Guj 2672

In the High Court of Gujarat at Ahmedabad
(BEFORE M.R. MENGDEY, J.)

Kamlesh Ramchandra Wadhvani

Versus

State of Gujarat and Others

R/Criminal Revision Application No. 340 of 2013

Decided on August 25, 2023

Advocates who appeared in this case :

Mr. D.M. Ahuja (115) for the Applicant(s) No. 1

Mr. Hemant B. Raval (3491) for the Respondent(s) No. 2

Ms. Vrunda Shah, App for the Respondent(s) No. 1

The Judgment of the Court was delivered by

M.R. MENGDEY, J.:— By filing the present Application under Section 397 read with Section 401 of the Criminal Procedure Code, 1973 the Petitioner [Original Accused] has challenged the order dated 13.5.2013 passed by the learned Metropolitan Magistrate Court No. 1, Ahmedabad in Criminal Case No. 2076 of 2008 below Application Exh.14.

2. The facts and circumstances giving rise to the present Revision Application are such that a complaint for the offence punishable under Sections 408 and 506(1) of the Penal Code, 1860 was registered against the Petitioner at the instance of the Complainant namely Kailash Nanakram Wadhvani. The said FIR had culminated into Criminal Case No. 2076 of 2008 and was pending trial before the concerned Trial Court. Pending the proceedings, an Application vide Exh.14 came to be submitted on behalf of the Applicant to the effect that since the matter has been amicably settled between the parties and the offence alleged against the Petitioner is compoundable under the provisions of Section 320 of the Code of Criminal Procedure, it was requested to accept the compromise arrived at between the parties to discharge the present Petitioner. The Trial Court, vide impugned order, had dismissed the said Application on the ground that the offence punishable under Section 408 of IPC is compoundable only to the extent of Rs. 2000/- whereas in the present case, the amount involved in the offence is above Rs. 1 lac, and therefore, the offence alleged against the present Petitioner cannot be said to be compoundable.

3. Being aggrieved by and dissatisfied with the same, the Petitioner has preferred the present Application.

4. Heard learned Advocate Mr. D.M. Ahuja appearing for the

Petitioner. He submitted that the offence alleged against the present Petitioner is compoundable in view of Section 320 of Cr. P.C. and the matter has been amicably settled between the parties. He has also produced a copy of the deposition of the first informant on record. He further submitted that Respondent No. 2 herein had submitted an Application before the concerned Trial Court for compounding the offence under Section 320 of Cr. P.C. The said Application was rejected by the Trial Court on the ground that as per the provision of Section 320 of Cr. P.C., the offence punishable under Section 408 of IPC is compoundable only to the extent of Rs. 2000/- and, since the amount involved in the present case is above Rs. 1 lac, the same is not compoundable. He submitted that the reason given by the Trial Court is not germane to the provisions of law. The concerned Trial Court has committed a serious error of law in dismissing the Application submitted by Respondent No. 2 herein. He therefore submitted to allow the present Revision Application and quash and set aside the order impugned in the present Application and allow the parties in the present proceedings to compound the offence.

5. Learned APP Ms. Vrunda C. Shah appearing for the Respondent - State has opposed the present Revision Application.

6. Respondent No. 2 - Kailash Nanakram Wadhvani is personally present before the Court and submitted that the matter has been amicably settled between the parties and he has no objection if the offence in question is allowed to be compounded.

7. Heard learned Advocates for the parties and perused the record.

8. Respondent No. 2 herein had lodged a private complaint against the Petitioner to the effect that the Petitioner was working with Respondent No. 2 as a Recovery Clerk. As a part of his duty, the Applicant had recovered Rs. 1,06,152/- from the various customers of Respondent No. 2 instead of handing over the said amount in cash to Respondent No. 2. The Petitioner had misappropriated the said amount and had thus cheated Respondent No. 2. Upon receipt of the complaint, the concerned Trial Court had ordered investigation under Section 156 (3) of Cr. P.C. The Investigating Agency, after conclusion of investigation, filed chargesheet against the present Petitioner and thus the Petitioner was put to trial for the said offences. Pending the trial, an Application was given by the present Respondent No. 2 to the effect that the matter had been amicably settled between the parties and therefore he may be allowed to compound the offence punishable under Section 408 and 506 of IPC in view of the provision of Section 320 of Cr. P.C. The said Application came to be turned down by the Trial Court on the ground that the offence punishable under Section 408 is compoundable only to the extent of Rs. 2000/- whereas the amount involved in the present case is above Rs. 1 lac.

9. Upon perusal of provision Section 320 of Cr. P.C., the offences punishable under Sections 408 and 506 of IPC are made compoundable. However, there is no reference to the effect that the offence punishable under Section 408 of IPC is compoundable to the extent of Rs. 2000/- only.

10. A certified copy of the deposition of Respondent No. 2 recorded before the Trial Court vide Exh.12 is also produced on record. Respondent No. 2, in his deposition, has clearly stated that; he has settled the matter with the present Petitioner and the Petitioner has also returned his money, and therefore, he does not want to proceed with the present matter any further. Thus, when the matter is amicably settled between the parties and the provision of Section 320 of Cr. P.C. is absolutely silent as regards the compounding of offence punishable under Section 408 of IPC only to the extent of Rs. 2000/-, it appears that the concerned Trial Court has committed an error in passing the impugned order. The Application therefore deserves to be allowed, and hence, the same is hereby allowed. The impugned order dated 13.5.2013 passed by the learned Metropolitan Magistrate, Court No. 1, Ahmedabad in Criminal Case No. 2076 of 2008 is hereby quashed and set aside and the Respondent No. 2 is allowed to compound the offence in view of the provision of Section 320 of the Code of Criminal Procedure. Rule is made absolute to the aforesaid extent.

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