

SUPREME COURT OF INDIA

Shri Pareshbhai Amrutlal Patel

Vs.

State of Gujarat

Crl.A.No.317 of 2020

(D.Y.Chandrachud and Hemant Gupta,JJ.,)

28.02.2020

JUDGMENT

Hemant Gupta,J.,

SLP(Crl.)No.3431 of 2018

1. The present appeal is directed against an order passed by the High Court of Gujarat on 11th December, 2017 whereby the petition for quashing of FIR No. 3 of 2007 registered at PS Mehsana for offence punishable under Sections 420, 406, 419, 467, 468, 379, 465, 475, 120-B and 114 of the Indian Penal Code, 1860 was dismissed.
2. The appellants had filed a complaint for an offence under Section 138 of the Negotiable Instrument Act, 1881 alleging that cheque No. 567889 dated 1st March, 2005 in the sum of Rs.4,50,000/- was issued by respondent No.2, which was dishonoured on presentation with the remarks that the account closed on 28th May, 2005. A complaint bearing private criminal case No. 33537 of 2006 was filed by appellant No.2 in the Court of Judicial Magistrate, Surat on 26th July, 2005.
3. It is thereafter, the complainant (respondent No. 2) filed a complaint against the appellants for offences under Sections 420, 406, 419, 467, 468, 379, 465, 475, 120-B and 114 of IPC bearing Criminal Case No. 9490 of 2008 on 17th October, 2007. The learned Magistrate forwarded the said complaint to the Police in terms of Section 156(3) of the Code of Criminal Procedure, 1973 . FIR No. 3 of 2007, as mentioned above, was lodged on the basis of such order.
4. The appellants had sought quashing of the said FIR in a petition under Section 482 of the Code which was dismissed by the High Court. The respondent No.2 had alleged that three cheques bearing Nos.567888, 567889 and 567890 were misplaced along with letter heads, rubber stamps and other important documents from the office of the Company and one of the cheques had been used by the appellants which was dishonoured on presentation. Therefore, the appellants have been rightly facing the prosecution of the offences as mentioned in the FIR.

5. The stand of the appellants is that such cheque was given to them along with letter dated 25th November, 2002 in view of the fact that the Company had not issued shares for which the appellants had contributed a sum of Rs.4,50,000/-. The cheque in question was issued since the shares could not be issued, therefore, cheque was issued payable after a long period.

6. No one has put in appearance on behalf of respondent No. 2 even though served. We have heard learned counsel for the parties.

7. We find that the issue in both the complaints pertains to cheque No. 567889 which was said to be from the cheque book of the Company of which respondent No. 2 is the officer. The appellants rely upon the said cheque in a complaint for an offence under Section 138 of the NI Act whereas the respondent No.2- complainant alleges that said cheque along with two other cheques had been misplaced which were used by the appellants fraudulently.

8. The complaint filed by the appellants under Section 138 of the NI Act is earlier in point of time. The complaint filed by respondent No.2 is more than two years later. Since the issue in both the cases revolves around the same cheque, therefore, we find that instead of quashing the FIR No. 3 of 2007, the ends of justice would meet if proceedings arising out of FIR No. 3 of 2007 are transferred to the Court of Judicial Magistrate, Surat, where the proceedings of other complaint under Section 138 of the NI Act are pending so that the complaint filed by the appellants and the proceedings arising out of FIR alleged by respondent No. 2 are decided together to avoid contradictory judgments and to facilitate the issues which are common in both.

9. Consequently, the appeal is disposed of with the direction that the proceedings arising out of FIR No. 3 of 2007 PS Mehsana shall stand transferred to the Court of Judicial Magistrate, Surat where the proceedings of complaint No. 33537 of 2006 is pending. Both the cases shall be heard and decided together.

10. The parties are directed to appear before the Court of Judicial Magistrate, Surat on 16th March, 2020 for further proceedings in accordance with law.