2024 INSC 1057

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO.9225 OF 2017

SURESHBHAI BHADABHAI PANSURIYA …PETITIONER

VERSUS

THE STATE OF GUJARAT & ANR. …RESPONDENTS

R1: STATE OF GUJARAT

R2: JAYDEV CHHAGANBHAI ARDESHANA (PATEL)[1]

WITH

SPECIAL LEAVE PETITION (CRIMINAL) NO.9226 OF 2017

SURESHBHAI BHADABHAI PANSURIYA …PETITIONER

VERSUS

THE STATE OF GUJARAT & ORS. …RESPONDENTS

R1: STATE OF GUJARAT

R2: JAYDEV CHHAGANBHAI ARDESHANA (PATEL)[2]

Signature Not Verified
Digitally signed by Jayant Kumar Arora
Date: 2024.03.19 16:58:24 IST
Reason:

[1] Partner in M/s. J.N. Corporation.

[2] *Ibid*.

R3: M/S BRAHMANI BUILDCON

O R D E R

AHSANUDDIN AMANULLAH, J.

In these petitions, the common petitioner assails separate but identical Final Judgments dated 12.10.2017 passed in Criminal Miscellaneous Applications (For Quashing & Set Aside FIR/Order)[3] Nos.10909 of 2017 and 11594 of 2017 (hereinafter referred to as the 'Impugned Judgments') by a learned Single Bench of the High Court of Gujarat (hereinafter referred to as the 'High Court'). By the Impugned Judgments, the High Court dismissed the the afore-noted Criminal Miscellaneous Applications, rejecting the prayers made to quash the criminal proceedings against the petitioner, being Criminal Case (CC) No.13900 of 2016 (with respect to[4] Cheque No.019748) and Criminal Case (CC) No.1221 of 2017 (w.r.t. Cheque No.019749) pending on the file of the Chief Judicial Magistrate at Vadodara. The petitioner is accused no.1 in CCs No.13900 of 2016 and 1221 of 2017, filed by the complainant-respondent no.2 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act').

BRIEF FACTS:

2. The respondent no.2-complainant is a Partner in the Partnership Firm

[3] (sic).
[4] Hereinafter abbreviated to w.r.t.

named M/s J.N. Corporation. The respondent no.3-accused no.2-M/s Brahmani Buildcon is a Partnership Firm and accused no.1 and accused nos.3 to 9 are Partners of the said Partnership Firm-respondent no.3. The accused persons are engaged in the business of construction of residential houses, flats and shops. Petitioner-accused no.1 before this Court is one of the Partners in respondent no.3-accused no.2.

3. M/s. J.N. Corporation entered into an Agreement to Sell dated 19.06.2012 (hereinafter referred to as the 'ATS') with the original landowners of land situated at Revenue Survey No.576 having Final Plot No.26 at Sayajipura, District Vadodara admeasuring 27,855 sq. mtrs. for Rs.37,15,00,000/- (Rupees Thirty-Seven Crores and Fifteen Lakhs) having fixed the rate at Rs.1,200/- (Rupees One Thousand Two Hundred) per sq. mtr. The ATS was notarized and registered with Registration Number 1289. As per the ATS, the amounts were to be paid on different dates by respondent no.2 to the original owners, with the last tranche to be paid on 01.11.2014.Certain modifications to the ATS were made between the respondent no.2-complainant (on behalf of M/s. J.N. Corporation) and the landowners on 26.06.2013.

4. On 28.06.2013, in part-performance of the ATS, as modified, the original landowners executed a registered Sale Deed in favour of

respondent no.2 *qua* 5475.81 sq. mtrs. out of 27855 sq. mtrs. of the land towards a consideration of Rs.7,07,29,932/- (Rupees Seven Crores Seven Lakhs Twenty-Nine Thousand Nine Hundred Thirty-Two). On 12.09.2014, the original landowners, on account of non-performance of obligations under the ATS as modified, sent a Legal Notice to M/s. J.N. Corporation purporting to have cancelled the ATS, as modified, and forfeited Rs.1,15,00,000/- (Rupees One Crore Fifteen Lakhs) already paid to them.

5. M/s. Brahmani Buildcon [accused no.2-respondent no.3 in SLP (Crl.) No.9226/2017] showed interest in purchasing the aforesaid land. Therefore, accused no.2 Partnership Firm, through one of its Partners i.e., the petitioner, entered into a Memorandum of Understanding (hereinafter referred to as the 'MoU') on 14.05.2015. M/s. Brahmani Buildcon (through petitioner) M/s. J.N. Corporation (through respondent no.2), in whose favour the ATS was executed as well as the original landowners through their Power-of-Attorney-holder, one Mr. Ratilal M. Patel, were parties to the said MoU. M/s. Brahmani Buildcon agreed, *inter alia*, to purchase part of the land admeasuring 23,279.19 sq. mtrs. from the original owners. On 14.05.2015 itself, *vide* a separate Cancellation Deed between the original landowners and respondent no.2, the ATS and its modification were cancelled.

6. Since respondent no.2-complainant had an ATS in his favour and had paid certain amounts to the original landowners, M/s. Brahmani Buildcon agreed to pay Rs.7,68,00,000/- (Rupees Seven Crores Sixty-Eight Lakhs) by issuing five cheques. The details of the cheques were mentioned in the said MoU, apart from other terms and conditions. The first cheque was dated 15.12.2015 amounting to Rs.84,00,000/- (Rupees Eighty-Four Lakhs), whereas the fifth/last cheque was of February, 2018[5] amounting to Rs.4,80,00,000/- (Rupees Four Crores Eighty Lakhs). A Cancellation Deed dated 07.01.2016 was entered into by the petitioner with the original landowners to cancel the MoU; respondent no.2 was not a party to this Deed.

7. The first cheque was deposited on 15.12.2015 in the account of respondent no.2, which was returned with an endorsement that payment was stopped by the drawer on 18.12.2015. A Notice was issued by respondent no.2 under Section 138 of the Act on 05.01.2016 to respondent no.3 calling upon it to pay the cheque amount within a period of 15 days as provided under the Act. As the amount was not paid, a complaint came to be filed by the respondent no.2 before the competent Court under the Act.

8. The Magistrate issued summons to the accused persons, which was

[5] Mistyped as '31.02.2018' in the MoU.

challenged by the petitioner in the High Court by way of the underlying Criminal Miscellaneous Applications. The High Court negatived the challenge holding that although the complainant had a remedy to file a civil suit seeking specific performance, it would not mean that he was disentitled from prosecuting the petitioner under the Act. The High Court further observed that as per Clause 4 of the MoU, if cheques were dishonoured, the cheque-holder had a right to take all recourses under law.

PETITIONER'S SUBMISSIONS:

9. Learned senior counsel for the petitioner submitted that complaint filed by the respondent no.2 under the Act was not maintainable as there is no debt or other liability as defined under Section 138 therein. It was submitted that the cheques were issued by the respondent no.3 for a future event i.e., execution of a Sale Deed by the original landowners, for which the payment made by the respondent no.2 cannot be treated as debt under the Act.

10. Learned senior counsel further submitted that by entering into the MoU, the parties thereto agreed to transfer their rights with regard to the immovable property in question. It was urged that if one party failed to comply with the terms and conditions therein, the only remedy available to

the other/affected party is to file a civil suit before the competent Court. It was canvassed that the complainant has already availed the said remedy by filing Special Civil Suit No.103 of 2016 in the Court of the learned Senior Civil Judge, Vadodara.

11. Reliance was placed on a judgment of this Court in ***Indus Airways Private Limited v Magnum Aviation Private Limited*****, (2014) 12 SCC 539**, wherein it has been held that the explanation appended to Section 138 of the Act explains the meaning of the expression '*debt or other liability*' for the purpose of Section 138 of the Act. It was submitted that a complaint can be entertained under Section 138 of the Act only if debt or other liability is legally enforceable. Learned senior counsel submitted that it has been specifically held that if a cheque is issued as an advance payment, and subsequently, if the deal is cancelled, it cannot be treated as debt or other liability. He further contended that in the present case, it is clear from the MoU that the deal entered into between the parties can be treated as cancelled since the petitioner was no longer interested in purchasing the property. He, therefore, would reiterate that the complaint is not maintainable under the Act. It was advanced that the petitions be allowed.

RESPONDENT NO.2'S SUBMISSIONS:

12. Learned senior counsel for respondent no.2 submitted that the case is

covered under the Explanation to Section 138 of the Act since the debt is legally enforceable, though the complainant may have also lodged a civil suit for specific performance, permanent injunction or any other relief available under civil law.

13. Our attention was drawn to Clause 4 of the MoU and it was submitted that if cheques were dishonoured, the cheque-holder had a right to take all recourses under law relying upon the judgment in ***Sampelly Satyanarayana Rao v Indian Renewable Energy Development Agency Limited*****, (2016) 10 SCC 458**, wherein this Court after considering the decision in ***Indus Airways*** (*supra*) held that if a debt or liability is present on the date of presentation of the cheque, it would be a legally enforceable debt under the Act.

14. The decision in ***Rangappa v Sri Mohan*****, (2010) 11 SCC 441**, was shown to the Court, on the point that once issuance of cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the cheque-holder arises under the Act and then it is for the accused to rebut the said presumption.

15. It was further argued that in connivance with the landowners, the petitioner has again entered into a *Banakhat* with a third-party, namely one

M/s. Khetal Realty for the land behind the back of the respondent no.2-complainant. It was submitted that such conduct of the petitioner establishes that he has tried to dupe the complainant by entering into multiple transactions without any payment(s) to the complainant who is the actual *Banakhat*-holder of the land in question. With this, he urged that the petitions deserve to be dismissed.

ANALYSIS, REASONING & CONCLUSION:

16. Having heard learned senior counsel and learned counsel for the respective parties, it is clear that the cheques issued by the petitioner to the respondent no.2-complainant were towards discharge of a legal debt under and as per the terms of the MoU. Even on the date of presentation of the cheques, the MoU was very much alive and there could not have been any reason, much less, legally justifiable reason for the petitioner to have issued an advisory to the bank to stop payment relating to the cheques in question. The petitioner could not have unilaterally taken a decision that he was no more interested in the land. Such unilateral act would not make the issued cheques unactionable such that the petitioner could escape his liability thereunder. At this juncture, it would be relevant to indicate that there was no formal communication to the complainant with regard to the petitioner being uninterested in buying the land and/or

seeking return of the cheques already issued. What, instead the petitioner did, was to execute a Cancellation Deed dated 07.01.2016 with the original landowners alone to cancel the MoU; pertinently respondent no.2 was not a party thereto.

17. The petitioner, being a businessman, can neither lay claim to being a layman nor can he said to be unaware of the liability that attaches upon issuing a cheque. Having instructed the bank to stop payment, in the relevant factual background, clearly would show that he was aware that his actions could amount to providing the complainant an actionable claim under the Act. Save and except a bald statement made that because he was no longer interested in buying the land, instructing the bank to stop payment of the two cheques was justified and legally tenable as a defence to rebut the presumption of existence of a legally payable debt towards the complainant under the Act cannot be accepted. The argument for the petitioner that the matter is purely civil in nature is noticed only to be rejected. The fact that there is a special enactment, *viz*. the Act, providing for a specific remedy where a cheque issued by a party is not honoured on presentation, is not in derogation to any other law. Law is well-settled on the point that, absent a specific bar, proceedings under various statutes can proceed simultaneously which, in the present case, has occurred, as the respondent no.2-complainant has also resorted to a civil remedy. To

clarify the factual position, it is noted that the civil suit is for ancillary relief *qua* the land, but not with regard to the non-payment of the cheques' amounts.

18. The decision cited by the learned senior counsel for the petitioner does not cover the factual matrix of the present case and thus, offers no succour to the petitioner. On the other hand, the decision relied upon by the learned senior counsel for the respondent no.2-complainant pertaining to the ability to take recourse both under the Act as well as through a civil suit would support the complainant's case. The Cancellation Deed dated 07.01.2016 contains a clause which is to the effect that the petitioner's liability, if any, towards M/s. J.N. Corporation would stand extinguished, but this, being in the absence of respondent no.2 would not bolster the petitioner's case.

19. An important aspect which the Court would also indicate is the fact that the issuance of the cheques, the figures/amounts filled in therein as well as the signature(s) have not been denied. The execution of the MoU *per se* is also not denied. In the overall scenario emerging, no case is made out to interdict the actions of the High Court.

20. For the reasons aforesaid, we do not find any reason to interfere in the Impugned Judgments. Accordingly, the petitions shall stand dismissed. Interim Order dated 01.12.2017 is vacated. It is clarified that observations hereinabove are for the purpose of considering the prayers made herein and would not affect trial(s) under the Act. Insofar as the pending civil suit is concerned, we have not made any comment thereon. We were also informed at the Bar that the petitioner had filed an FIR against the original landowners, wherein a Chargesheet has been filed; we record that this Order shall also have no bearing upon the proceedings emanating therefrom.

21. No order as to costs. Pending IAs shall stand consigned to records as the petitions are dismissed.

……J.
[SUDHANSHU DHULIA]

……J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
21st NOVEMBER, 2024

ITEM NO.4A COURT NO.14 SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 9225-9226/2017

[Arising out of impugned final judgment and order dated 12-10-2017 in CRLMA No. 10909/2017 12-10-2017 in CRLMA No. 11594/2017 passed by the High Court of Gujarat at Ahmedabad]

SURESHBHAI BHADABHAI PANSURIYA Petitioner(s)

VERSUS

THE STATE OF GUJARAT & ANR. Respondent(s)

(IA No. 59595/2018 - EXEMPTION FROM FILING O.T.
(IA No. 59592/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ ANNEXURES)

Date : 21-11-2024/19-03-2025

CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Arunabh Chowdhury, Sr. Adv.
Mr. Ankur Chawla, Adv.
Mr. Rahul Pratap, AOR
Mr. Karan Gogna, Adv.

For Respondent(s) Mr. Nikhil Goel, Sr. Adv.
Mr. Ashutosh Ghade, AOR
Ms. Siddhi Gupta, Adv.
Mr. Adithya Koshy Roy, Adv.
Ms. Naveen Goel, Adv.

Ms. Mahima Gupta, AOR

Ms. Deepanwita Priyanka, Adv.
Ms. Swati Ghildiyal, AOR
Ms. Devyani Bhatt, Adv.

UPON being mentioned by counsel the Court made the following
O R D E R

On 21.11.2024, the following order was passed :-

"After hearing learned senior counsel appearing for the parties, we see absolutely no reason to interfere with the impugned order(s) passed by the High Court. The Special Leave Petitions are, accordingly, dismissed.

Interim order dated 01.12.2017 stands vacated.

Reasons to follow."

The reasoned order is being uploaded today i.e. on 19.03.2025.

(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
COURT MASTER

(Signed non-reportable order is placed on the file)

ITEM NO.4 COURT NO.14 SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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SURESHBHAI BHADABHAI PANSURIYA Petitioner(s)

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(IA No. 59595/2018 - EXEMPTION FROM FILING O.T.
(IA No. 59592/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ ANNEXURES)

Date : 21-11-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Arunabh Chowdhury, Sr. Adv.
Mr. Ankur Chawla, Adv.
Mr. Rahul Pratap, AOR
Mr. Karan Gogna, Adv.

For Respondent(s) Mr. Nikhil Goel, Sr. Adv.
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(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
COURT MASTER