ABC 2019 (I) 229 GUJ
ACQUITTAL & BAIL CASES

a

HIGH COURT OF GUJARAT

(A.S. Supehia, J.)

R/Criminal Misc. Application No. 30275 Of 2017

Decided on 6 December, 2018

b ***PUSHPABEN VISHNU SINGHAL, DIRECTOR OF MANSA CYNTHETIX PVT.LTD - Appellant(s).***

Versus

STATE OF GUJARAT - Respondent(s).

c ***Law Covered:- Code of Criminal Procedure, 1973 — Section 482 — Quashing of complaint — Negotiable Instrument Act, 1881 — Section 138 r/w 141 — Present applicant had already resigned from the Directorship of the accused company after compliance of all formalities including filling Form No. 32 — Held, applicant cannot be***
d ***implicated for the alleged offence of issuing the cheques — complaint quashed & set aside. (Para 7)***

Held:- Thus, it is an undisputed fact that the present applicant ceased to be the Director of the company since 26.10.2010, hence, she cannot be implicated for the alleged offence of issuing the cheques in
e 2012. It appears that the trial would be futile and further continuance of the proceedings pursuant to the impugned FIR would amount to abuse of process of law and hence, to secure the ends of justice, the impugned complaint is required to be quashed and set aside in exercise of powers conferred under Section 482 of the Code. (Para-7)

f ***Counsel:-*** ***For Appellant(s):*** *Mr. Hardik A Dave,Adv.*

For Respondent(s): *Mr. Mr Himanshu K Patel, Chirag B Upadhyay,Adv.*

JUDGMENT

g ***A.S. SUPEHIA, J.: -*** 1. **Rule**. Learned Additional Public Prosecutor as well as learned advocate for the respondents waive service of notice of Rule on behalf of the respective respondent.

2. On 04.12.2018, this Court has passed the following order:-

h *Learned advocate Mr. Hardik Dave appearing on behalf of the applicant has invited the attention of this court to the date of various cheques as incorporated in the impugned complaint. He has*

submitted that as reflected in the complaint, the date mentioned on the cheques is 13.04.2012. He has also submitted that the present applicant vide communication dated 26.10.2010 had resigned from the directorship of the company. He has further submitted that accordingly, the Board has passed a resolution dated 26.10.2010 accepting the resignation of the applicant. He has also referred to Form No.32 filed in by the company, wherein it is specifically stated that the present applicant is not associated with the company w.e.f. 26.10.2010. Thus, the learned advocate for the applicant has submitted that no offence, as incorporated in the complaint is made out against the present applicant.

When the matter is called out, learned advocate Mr.Chirag Upadhyay appearing on behalf of respondent No.2 has chosen not to remain present, though the matter has been called out twice. Learned advocate Ms.Devanshi Shah has requested for some time and has submitted that learned advocate Mr. Saiyad would be appearing in the matter on behalf of respondent No.2. At her request, the matter is kept on 06.12.2018. To be listed at the top of the board. It is clarified that no further adjournments shall be granted.

3. Today, when the matter is taken up for hearing, no one on behalf of the complainant is present, and hence, this Court constrained to take up the matter and finally decide the same.

4. In the present writ application, the applicant has prayed for quashing the complaint filed before the Additional Chief Judicial Magistrate, Surat vide Criminal Case No. 28703 of 2013 along with all subsequent proceedings thereto qua present applicant.

5. Learned advocate Mr. Hardik A. Dave appearing for the applicant has submitted that the respondent no. 2 has lodged a complaint before the Additional Chief Judicial Magistrate, Surat vide Criminal Case No. 28703 of 2013 against the applicant and others for the offences punishable under Section 138 read with Section 141 of the Negotiable Instrument Act, 1881 (N.I.Act) The Magistrate, after recording verification of the respondent no. 2 on oath, thought it fit to conduct court inquiry under Section 202 of the Code of Criminal Procedure,1973 ("Cr.P.C." for short) vide its order dated 15th June 2012. The Magistrate vide its order dated 24th May, 2013, after considering the verification of the complainant as well as documents produced on record along with the complaint thought it fit to issue the process under Section 138 of the N.I. Act.

6. Learned advocate for the applicant has submitted that the applicant has been falsely implicated in the complaint, as alleged, since it is undisputed fact that the present applicant has already resigned from the Directorship of the original Accused No. 1 company since 26.10.2010 after compliance of all formalities including filling Form No. 32 and hence, the impugned complaint is required to be quashed. Learned advocate for the applicant has submitted that as noted hereinabove in the order dated 04.12.2018 the present applicant vide communication dated 26.10.2010 had resigned from the directorship of the company as well as her resignation has also been accepted by the company. He has further submitted that Form No. 32 filled in by the company, wherein it is specifically stated that the present applicant is not associated with the company w.e.f. 26.10.2010.

7. Thus, it is an undisputed fact that the present applicant ceased to be the Director of the company since 26.10.2010, hence, she cannot be implicated for the alleged offence of issuing the cheques in 2012. It appears that the trial would be futile and further continuance of the proceedings pursuant to the impugned FIR would amount to abuse of process of law and hence, to secure the ends of justice, the impugned complaint is required to be quashed and set aside in exercise of powers conferred under Section 482 of the Code.

8. In view of the above, this application is allowed and the complaint filed before Additional Chief Judicial Magistrate, Surat vide Criminal Case No. 28703 of 2013 along with all subsequent proceedings thereto are hereby ordered to be quashed. Accordingly, Rule is made absolute. Direct service is permitted.

Result:- Application allowed.

ABC 2019 (I) 231 GUJ

ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(A.S. Supehia, J.)

R/Criminal Misc. Application No. 7494 Of 2015

Decided on 5 December, 2018

BHUPENDRABHAI NATWARLAL SHAH ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***Code of Criminal Procedure, 1973 — Section 482 — Quashing of FIR — Indian Penal Code, 1860 —***