

C.R. PATIL

v.

STATE OF GUJARAT & ORS.
(Criminal Appeal No. 1573 of 2008)

OCTOBER 3, 2008

[C.K. THAKKER AND D.K. JAIN, JJ.]

Criminal law: Prosecution for default in payment of dues – Arrest of appellant – Order releasing him on temporary bail on certain terms and conditions – One time settlement (OTS) between parties – In terms thereof, full payment made by appellant – Plea of appellant that he be relieved from the conditions imposed in interim order – Tenability of – Held: Tenable – In view of full settlement between parties and payment made under OTS, nothing remained due and payable – Conditions in interim order did not survive – Properties ordered to be released – Compromise/Settlement.

Appellant was the Director of AEPL Company which was engaged in the business of construction. The said company obtained a substantial amount of loan from respondent no.4-Bank for construction of houses. Respondent No.4-Bank went into liquidation and was ordered to be closed as per direction of RBI. The said Bank filed Lavad case against AEPL company for recovery of more than Rs.51 crores. Criminal proceedings were also initiated for various offences under Indian Penal Code and the appellant was arrested in connection with those offences. He remained in jail for sometime. He made an application for release on bail. A prayer was made for enlarging him on temporary bail which was granted on certain terms and conditions. At the final hearing, however, the High Court dismissed the petitions and vacated the interim relief which was granted earlier; and the appellant was again taken into custody.

A The appellant approached the Supreme Court. On
22.7.2005, a three-Judge Bench granted temporary bail
to the appellant holding that he intended to enter into
meaningful negotiations with the respondents and do all
the necessary acts for payment of loan amount and, there-
B fore, it was in the interest of justice to enlarge him on bail.
The appellant stated that he had entered into One Time
Settlement (OTS) with the respondent-Bank and fully re-
paid the amount as per the said settlement. Respondent
no.4-Bank accepted the fact of payment of settlement
C amount and also withdrew the Lavad case.

Partly allowing the appeals, the Court

HELD: 1. The amount which was required to be paid
by M/s AEPL has already been paid by the appellant un-
D der OTS. The Bank has, by its communication dated Sep-
tember 19, 2008 accepted the above fact. Again, the Bank
which had filed Lavad Case through Official Liquidator in
the Court of Board of Nominees, has also withdrawn the
said suit in view of settlement and receipt of payment
under OTS. The State has also no objection to the said
E settlement. [Para 14] [160-C,D]

2. The appellant is entitled to the relief sought. In view
of full settlement between the parties and payment made
by the appellant under OTS, nothing remained due and
F payable by the appellant to respondent No.4-Bank. Ac-
cordingly, the properties are ordered to be released. The
condition imposed by the High Court in the interim order
does not survive and his properties may be ordered to be
released from attachment and be made available to him
G by relieving him of the undertaking given by him. [Paras
15, 16] [160-F & E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1573 of 2008

H From the Judgment and final Order dated 6/10/2004 of

the High Court of Gujarat at Ahmedabad in Criminal Misc. Application No. 3331 of 2003

K.T.S. Tulsi, Aniruddha P. Mayee, Sanjeev Kumar Choudhary, Rucha A Mayee and Sanjay Visen for the Appellant.

Hemantika Wahi, Pinky, K. Enatali Sema, Anip Sachthey, Abhijit P Medh and Brajesh Kumar for the Respondents.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted.

2. The present appeals are directed against the judgment and order dated October 06, 2004 passed by the High Court of Gujarat in Criminal Miscellaneous Application NOs. 3331 and 5302 of 2003. By the said order, the High Court dismissed the bail applications filed by the appellant.

3. It is not necessary to narrate the prosecution-case in detail in view of the fact that the matter relates to criminal prosecution and default in making payment by the appellant but the matter is settled between the parties and the amount has already been paid by the appellant as per the settlement.

4. Briefly stated, the case of the prosecution is that the appellant herein is engaged in the business of construction and he is a Director and majority shareholder of M/s Abhishek Estates Pvt. Ltd. ('M/s AEPL' for short). On May 01, 2000, the appellant requested Gujarat Industrial Development Corporation ('GIDC' for short), Surat for allotment of land for the purpose of development of Housing Zone. The land was allotted and permission was granted by Surat Urban Development Authority (SUDA) for construction of houses. An application made by M/s AEPL to the Diamond Jubilee Co-operative Bank Ltd., Surat (in liquidation), respondent NO. 4 herein to advance a loan was granted and substantial amount was paid by respondent No. 4 to M/s AEPL. The Bank was ordered to be closed as per the direction of the Reserve Bank of India. Respondent No.4 Bank

A filed Lavad Case NO.1180 of 2002 against M/s. AEPL and others for recovery of more than Rs.51 crores. Criminal proceedings were also initiated for various offences under the Indian Penal Code, 1860 and the appellant herein was arrested in connection with those offences.

B 5. The appellant remained in jail for quite some time. He made applications for release on bail. When the matters came up before the High Court of Gujarat, a prayer was made to enlarge the appellant on temporary bail. The Court granted the prayer by an interim order, dated July 25, 2003 on certain terms and conditions. One of the conditions imposed on the appellant reads thus;

D "The petitioners shall file an undertaking on oath in this court within a period of one week from today giving copies to the learned Public prosecutor and the administrator of the complainant bank, to undertake that he shall facilitate, assist and co-operative in the earliest possible disposal of all the properties pledged to the bank by himself or his family members of the company in which either of them was one of the directors of, members as per the agreement and understanding recorded in this order. List with exact details and approximate market value of the seven other immovable properties which were stated to be available as recorded hereinabove shall be annexed to the undertaking and the undertaking shall state that the petitioner shall not, directly or indirectly, alienate, transfer, encumber, let out or in any way deal with any of those properties or allow such dealing till recovery of full amount due to the bank and that those properties shall also be available for being sold by the Administrator of the complainant bank in case of any deficit after sale of the properties pledged to the bank. If any of the aforesaid properties are held or standing in the name of any of the family members of the petitioners, such family member shall also file similar undertaking in respect of the particular property. The petitioners shall also undertake, as stated

before the court, that the petitioners shall sign the necessary documents, make the necessary applications in the pending legal proceedings regarding the properties to be put up for sale and co-operative in every manner and be available at all times for implementation and execution of the arrangement arrived at as above for the purpose of discharging his debts.

6. The appellant was accordingly enlarged on bail during the pendency of the petition. At the final hearing, however, the High Court dismissed the petitions and vacated interim relief which was granted earlier. Resultantly, the relief which was granted in favour of the appellant came to an end and he was taken in custody again.

7. The appellant approached this Court. Notice was issued and the matter was heard from time to time. On July 22, 2005, a three-Judge Bench granted relief to the appellant by observing as under;

“Having heard the learned counsel for the parties, we are of the view that it would be in the interest of justice to grant prayer of the petitioners. As stated in the petition itself, the order passed by the High Court is subject matter of challenge and Special Leave Petitions are pending before this Court. It has also come on record that earlier prayer for temporary bail was granted by this Court pursuant to which the petitioners were enlarged on bail, no doubt for a temporary period. It is not even the allegation of the respondents that the petitioners have violated terms and/or conditions of the said order passed by this Court. When the petitioners have shown their willingness to pay the amount and the Special Leave Petitions are pending, this Court will consider all aspects when the matters will be taken up for hearing. But in view of the fact that an order was passed by this Court temporarily releasing them on bail is over and Special Leave Petitions await hearing and as stated by learned counsel for the petitioners, the

A petitioners intend to enter into meaningful negotiations with the respondents and to do all the necessary acts for payment of loan amount, it would be in the interest of justice to enlarge them on bail so as to enable them to make arrangements for such payment.

B For the foregoing reasons, the application deserves to be allowed and is accordingly allowed. The petitioners are ordered to be enlarged on bail till further orders on their each furnishing a personal bond in an amount of Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties of the like amount to the satisfaction of the Sessions Court, Surat, on the same terms and conditions on which they were released on bail by this Court on March 7, 2005.

D As is clear, we are allowing bail to the two petitioners persuaded by very peculiar facts and circumstances of this case, and guided mainly by the consideration that their retention in jail would be adverse to the interest of the several investors/depositors of the bank while the latter are likely to be benefited by the release of the petitioners on temporary bail, it is hoped that the petitioners shall make a genuine effort making use of their liberty to clear the debts. If the petitioners are found to have failed in discharging this obligation or misusing their liberty in any way, the order of bail shall be liable to be recalled."

F 8. Pursuant to the above order, the appellant was released on bail. The learned counsel for the appellant stated that the appellant made sincere efforts and has entered into One Time Settlement (OTS) with the respondent Bank and fully re-paid the amount as per the said settlement. Respondent No. 4-Bank addressed a letter to the appellant in the capacity of Director of M/s AEPL which reads thus;

H "This is to certify that the abovementioned account No.OD-ODR-011 has been fully repaid as per your application under Special One Time Settlement Scheme (18-5-07)

approved by the High Level Committee meeting held on 25-8-2008." A

9. The matter was thereafter placed before a two-Judge Bench on September 19, 2006 and the following order was passed;

"It is stated by Mr. K.T.S. Tulsi, learned senior counsel appearing for the petitioner(s) that the parties have settled their disputes in terms whereof out of Rs.68 crores, 25% of which would come to Rs.17 crores would be paid by the petitioner(s). It is stated that the petitioner(s) have deposited a total amount of Rs.12 crores by now. The diamond Jubilee Co-operative Bank Ltd. in terms of its letter dated 14.9.2006 has allowed the petitioner(s) to pay balance amount of Rs.5 crores by 4.10.2006. Mr. Tulsi states that petitioner(s) shall pay the balance amount of Rs.5 crores within the aforementioned period." B C D

10. The respondent No. 4-Bank is in liquidation and Official Liquidator is managing the affairs of the Bank who has filed Lavad Case No. 1180/2002 in the Court of Board of Nominees at Surat. He has also informed the Board of Nominees that the defendants in the Lavad Suit (M/s AEPC & Ors.) had fully paid up the full amount under OTS Scheme and the plaintiff (Bank) did not want to proceed with the matter and accordingly it sought permission to withdraw the suit. E

11. The said application reads thus; F

"The defendant of this matter has fully paid up the full amount under the OTS Scheme, which has been agreed in the meeting dated 25.8.2008 of High Level Committee (Gandhinagar), this plaintiff does not want to proceed in this suit and on today withdraw the same unconditionally, which is declare to this honourable court. G

For, this suit has been withdrawn whatever refund for it is required to be paid, same shall have to be paid in the name of the bank." H

A 12. Necessary permission was granted by the Board of Nominee for withdrawal of the suit and the Lavad Case is no more pending.

B 13. We have also heard the learned counsel for the State. On behalf of the State it was stated that the entire amount which was required to be paid by M/s AEPC has already been paid and an appropriate order may be passed granting relief in favour of the appellant and the State has no objection if such prayer is granted.

C 14. From the above facts, it is clear that the amount which was required to be paid by M/s AEPC has already been paid by the appellant herein under OTS. The Bank has, vide its communication dated September 19, 2008 referred to above, accepted the above fact. Again, the Bank which had filed Lavad Case through Official Liquidator in the Court of Board of Nominees, Surat has also withdrawn the said suit in view of settlement and receipt of payment under OTS. The State has also no objection to the said settlement.

D 15. The learned counsel for the appellant now prays that in view of full payment under OTS, nothing requires to be done by the appellant. The condition imposed by the High Court in the interim order referred to above does not survive and his properties may be ordered to be released from attachment and be made available to him by relieving him of the undertaking given by him.

E 16. In our opinion, the appellant is entitled to the relief sought. In view of full settlement between the parties and payment made by the appellant under OTS now nothing is due and payable by the appellant to the respondent No.4-Bank. Accordingly, the properties are ordered to be released. Title Deeds and documents, if any, pertaining to the said property be handed over and returned to the appellant by respondent No.4-Bank. The appellant is also relieved of the undertaking given to the Court.

F 17. Appeal Partly allowed.

G H D.G.

Appeals allowed.