

HIGH COURT OF GUJARAT

**WELCOME SUPER TEA PROCESSING PVT LTD
V/S
STATE OF GUJARAT**

Date of Decision: 21 February 2008

Citation: 2008 LawSuit(Guj) 516

Hon'ble Judges: [Bankim N Mehta](#)

Case Type: Criminal Revision Application

Case No: 372 of 2007

Subject: Criminal

Acts Referred:

[Code of Criminal Procedure, 1973 Sec 397, Sec 401](#)

Final Decision: Application dismissed

Advocates: [A D Shah](#), [K C Shah](#), [K S Nanavati](#), [Prabhav Mehta](#), [Nachiket A Dave](#)

Judgement Text:-

Bankim N Mehta, J

[1] The petitioners have filed this application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ["the Code" for short] and sought reliefs as under:

"[A] The Hon'ble Court may be pleased to de-exhibit Chief Examination Affidavit of Shri Sanjeev Rajendra Bharadiya produced at Exhibit 4;

[B] The Hon'ble Court may be pleased to direct the complainant, either to examine himself on oath or tender Chief Examination Affidavit under Section 145 of The Negotiable Instruments Act;

[C] The Hon'ble Court may be pleased to stay the proceedings of Criminal Case No.1231 of 2006 during the pendency of this Revision Petition;

[D] Any just and proper order may be passed."

[2] The petitioners are original accused facing trial under Section 138 of the Negotiable Instruments Act, 1881 ["the Act" for short] in Criminal Case No.1231 of 2006 instituted upon the complaint lodged by one M/s.Aishwarya Tea Suppliers Private Limited through Mr.Harisingh Ravatsingh Tanwar in the Court of learned Metropolitan Magistrate, Ahmedabad.

[3] During the course of trial, one Mr.Sanjeev Rajendra Bharadiya, a Director of M/s.Aishwarya Tea Suppliers Private Limited, filed his Chief Examination Affidavit, Exhibit 4, on 28.02.2007 in the trial Court. The learned advocate for the accused made endorsement thereon to the effect that "the person who has filed the affidavit is not the person who had lodged the complaint on behalf of the complainant-company and, therefore, his affidavit cannot be considered as affidavit of the complainant and the accused reserves his right to cross-examine the witness and wants to cross-examine him. Therefore, the matter may be adjourned."

On the same day, the complainant also gave an application, Exhibit 6, to exhibit the documents produced in the Court vide separate list along with affidavit of examination-in-chief. It is stated that the said list of documents was at Exhibit 5 in the trial Court. Thereafter, the accused filed reply dated 05.04.2007 against the application dated 28.02.2007 submitted by the complainant for exhibiting the documents. On the same date, the accused also filed objections to tendering of affidavit of Mr.Sanjeev Rajendra Bharadiya under Section 145 of the Act, inter alia, contending that Mr.Sanjeev Bharadiya, the Director of the complainant-company, can fall in the category of "any other witnesses", and the complainant is required to examine himself first and, thereafter, is required to seek permission of the

Court for examination of other additional witnesses. It is also contended that Chief Examination Affidavit of Mr.Sanjeev Bharadiya submitted under Section 145 of the Act, not being the affidavit of the complainant, the same may be de-exhibited. It was also prayed in the objections to direct the complainant-company to examine Mr.Harisingh Ravatsingh Tanwar in accordance with the provisions of law before considering the affidavit tendered by Mr.Bharadiya, who is neither shown as a 'witness' in the List of Witnesses nor permission is sought for by the prosecution to examine him as additional witness.

[4] After hearing the learned advocates for the parties, considering the record and the objections, the learned Metropolitan Magistrate, Court No.2, Ahmedabad, by his order dated 21.04.2007 allowed the application, Exhibit 6, and passed an order to give exhibit numbers to the documents produced at Serial Nos.1 to 57 with list of documents, Exhibit 5.

In the above factual matrix, the petitioners-original accused have preferred this Revision Application.

[5] I have heard Mr.Ashok D. Shah, learned advocate for the petitioners-accused, Mr.K.C.Shah, learned Additional Public Prosecutor for the respondent No.1-State, and Mr.Prabhav Mehta and Mr.Nachiket Dave, learned advocates for M/s.Nanavati Associates for the respondent No.2-complainant, at length and in great detail.

[6] Mr.A.D.Shah, learned advocate for the petitioners, has submitted that having regard to the objects and reasons of inserting Section 145 of the Act, the evidence of the complainant is required to be given on affidavit and no other persons except the complainant can file affidavit under Section 145 of the Act and the complaint was filed by one Mr.Harisingh Ravatsingh Tanwar, as an authorised person of the complainant-company, and his statement was recorded at the time of registration of offence, but the affidavit of examination in chief is filed by Mr.Sanjeev Rajendra Bharadiya, Director of the complainant-company and, therefore, the learned Magistrate committed error in accepting the affidavit and giving exhibit to it. He has also submitted that there is nothing to indicate that the Director was authorised to file the affidavit and in absence of such authorisation, the affidavit could not have been taken on record by the trial Court. He has also submitted that the affidavit of examination-in-chief is not a document and,

therefore, exhibiting it is not an interlocutory order and, therefore, the Revision Application is maintainable. It is also submitted that if it is construed as an interlocutory order and not an intermediate order then also the Court can examine the legality under Section 482 of the Code read with Article 226/227 of the Constitution of India. He has also relied upon the following authorities:

(a) Raj Kappor & Ors. vs. State (Delhi Administration) and Others, AIR 1980 SC 258;

(b) Jimmy Jahangir Madan vs. Bolly Cariyappa Hindley (deceased by L.Rs.), AIR 2005 SC 48;

(c) Ashok Bampto Pagui vs. M/s.Agencia Real Canacona Private Limited & Anr., 2007 Cri.L.J. 4645;

(d) Associated Cement Co. Limited vs. Keshvanand, AIR 1998 SC 596;

(e) K.Srinivasa vs. Kashinath, 2004 Cri.L.J. 4566;

(f) M/s.Pepsi Foods Limited & Anr. vs. Special Judicial Magistrate & Ors., AIR 1998 SC 128.

[7] Mr.Prabhav Mehta, learned advocate for the respondent No.2-complainant, has submitted that the order of giving exhibit is purely an interlocutory order and, therefore, in view of the provisions of the Code, the Revision Application is not maintainable. He has also submitted that interpretation of the words "the evidence of the complainant may be given by him on affidavit" occurring in Section 145 of the Act does not indicate that the complainant only can file affidavit. He has also submitted that interpretation canvassed by the other side is too narrow interpretation and that could not be the intention of the Legislature to give effect to the provisions of the Act. He has also submitted that the affidavit is filed by the Director, who is incharge of the management of the company and, therefore, he is not required to obtain any authority to file the affidavit and Section 145 of the Act indicates that any person can file affidavit either on the prosecution side or defence side and, therefore, the affidavit filed on behalf of the

complainant is a valid affidavit and it cannot be de-exhibited. He has also submitted that the complainant is the company and it is a question of evidence as to whether Mr. Bharadiya had an authority to represent the company and such authority could be filed at any time during the course of the trial and, therefore, the prayers made by the petitioners are required to be rejected. He has also relied upon the decisions in (1) State of Gujarat vs. Gaurang Mathurbhai Leuva & Ors. 1999 (3) GLR 2325; (2) M.M.T.C. Ltd. & Anr. vs. MEDCHL Chemicals & Pharma (P) Ltd. and Anr., (2002) 1 SCC 234; (3) Ceat Tyres Limited, Bombay vs. State of Gujarat & Ors., 2007 (2) GLR 1437; (4) Shubh Laxmi Enterprises vs. Vipulbhai S. Laskari, 2004 (4) GLR 3309.

[8] It appears from the prayers made in the revision application that the petitioners have not challenged the order dated 21.04.2007 below Exhibit 6. Therefore, technically this application is not a revision application and, therefore, it is not maintainable.

[9] It is not in dispute that there is no provision to de-exhibit any document admitted in the evidence during the trial. Therefore, it would be a question whether any document already exhibited during the trial could be de-exhibited or not.

In the decision of Bipin Shantial Panchal vs. State of Gujarat & Anr. (2001) 3 SCC 1, the Apex Court has laid down the procedure to be followed by the trial Court at the evidence taking stage when any objection is raised regarding admissibility of any material or any item of oral evidence. It was held by the Apex Court as under:

"When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed)."

[10] It appears from the endorsement made on affidavit that the accused disputed the affidavit on the ground that it was not filed by the person, who had lodged complaint. The complaint was filed by Mr. Harisingh Ravatsingh Tanwar, as an authorised person, on behalf of the complainant-company. There could not be any dispute that the complaint was filed by the company incorporated under the provisions of the Companies Act, 1956 and the person was authorised to file the complaint, but subsequently Mr. Bhardiya as a Director of the complainant-company filed Chief Examination Affidavit. It is true that no authority with regard to filing of an affidavit is produced on record. However, in view of the decision in Bipin Shantilal Panchal (supra), the trial Court was required to give exhibit to the affidavit. It is pertinent to note that the petitioners by making endorsement did not raise objection that it could not be exhibited but only alleged that the same could not be treated as affidavit of the complainant and reserved their right to raise defence and also sought cross-examination of the deponent. Therefore, the objection is not raised with regard to exhibiting the affidavit. Therefore, once the document is exhibited in evidence as there is no provision to de-exhibit the same, the Court has no power to de-exhibit the document.

[11] In the decision of M.M.T.C. Ltd. & Anr. (supra), the Apex Court in paragraph 12 has observed as follows:

"In the case of Associated Cement Co. Ltd. vs. Keshvanand, (1998) 1 SCC 687, it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the court. It has been held that if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even presuming, that initially there was no

authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground."

In view of the above decision, affidavit filed by the Director could not be discarded only because no authority was produced. The petitioners have sought cross-examination of the witness and, therefore, even if exhibit is given to the affidavit, it is not likely to cause prejudice to the petitioners.

[12] Another contention raised by the learned advocate for the respondent-accused is with regard to maintainability of the Revision Application. According to the respondent-accused, the order of exhibiting the affidavit being interlocutory in nature, Revision Application is not maintainable. In the decision of *Ceat Tyres Limited, Bombay* (supra), this Court while dealing with the question of exhibiting a document relied upon the decision of the Supreme Court in the case of *Bipin Shantilal Panchal* (supra), and held that mere decision of giving exhibit number could not be challenged in the Revision.

In the instant case, as observed earlier, the averments made in the memo of Revision Application indicate that the petitioners have not challenged the order, but have made a prayer to direct the prosecution to examine Harisingh Rawatsingh Tanwar before considering the affidavit. The objection is not in respect of marking exhibit of the affidavit. Therefore, marking of exhibit to the affidavit is a step in aid of proceedings. The relief to de-exhibit the affidavit is a relief of interlocutory nature. Therefore, this Court cannot entertain present application. Therefore also, the prayers made by the petitioners are required to be rejected.

[13] It is submitted by Mr. Shah, learned advocate for the petitioners, that the Court should, by exercise of powers under Articles 226/227 of the Constitution and Section 482 of the Code, pass appropriate orders with regard to the prayers made in the Revision Application. In my view, when there is no provision to de-exhibit a document, this Court cannot exercise its extraordinary powers on mere asking. There has to be reasonable and legal grounds to invoke such powers. As regards prayer to direct the complainant to examine himself on oath or tender affidavit, it is for the complainant to prove his case and court cannot give any direction as to how his case should be proved.

Therefore, the prayers made by the petitioners cannot be granted.

[14] As regards the contention that under Section 145 of the Act, only the person who has filed the complaint could file affidavit, it would not be proper for this Court to decide this contention at this stage as this Revision Application has been decided only on the ground of its maintainability and any discussion on that aspect may cause prejudice to the case of either party at the time of trial.

[15] Mr. Shah, learned advocate for the petitioners, has relied upon the decision of the Hon'ble Supreme Court in the case of Raj Kapoor & Anr. vs. State (Delhi Administration) and Others (supra), to support his contention that exercise of revisional powers does not bar exercise of inherent powers of the Court. In the said decision, the High Court refused to entertain the application on the ground that the Hon'ble Supreme Court held that final orders are capable of being considered in exercise of inherent powers if glaring injustice stares the court in the face. In the present case, it appears that there is no glaring injustice and, therefore, the Court is not inclined to exercise its inherent powers.

Mr. Shah, learned advocate for the petitioners, further relied upon the decision in M/s. Pepsi Foods Limited & Anr. (supra), with regard to exercise of powers under Articles 226 & 227 of the Constitution of India read with Section 482 of the Code. In the said decision, the Hon'ble Supreme Court has held that sometimes the Court has to exercise those powers for correcting some grave errors. In the present case, it appears that no such grave error is committed by the trial Court and, therefore, I do not propose to invoke the extraordinary powers.

[16] Mr. Shah, learned advocate for the petitioners, has also relied upon the decision in Ashok Bampto Pagui (supra), wherein Bombay High Court (Goa Bench) has laid down law with regard to complaint by Director of company. It appears from the said decision that the complaint was not filed by the company as provided under the provisions of the Act. In the facts of the present case, this decision is not applicable.

[17] Mr. Shah, learned advocate for the petitioners, has also relied upon the decision in K. Srinivasa vs. Kashinath (supra). In the said decision, Karnataka High Court has discussed the law with regard to recording of sworn statement of the complainant and his witnesses by accepting their affidavits. The said decision was in respect of dispensation of procedure contemplated in Section 200 of the Code. Therefore, this

decision is also not applicable in the facts of the present case.

[18] Mr.Shah, learned advocate for the petitioners, has relied upon the decision in Associated Cement Co. Limited (supra) in support of the contention that the person, who has filed the affidavit, should have asked for permission of the Court for filing of such affidavit. In view of the fact that this application is decided on the ground of its maintainability, this decision is also not applicable in the facts of the present case.

[19] Mr.Mehta, learned advocate for respondent No.2, has relied upon the decision in State of Gujarat vs. Gaurang Mathurbhai Leuva & Ors. (supra) with regard to interlocutory nature of order. It appears from the said decision that this Court in that decision observed that if it is found that the order passed is purely interim or temporary, which does not decide or touch the important rights and liabilities of the parties and give a final shape to a particular point at a particular stage during the course of the hearing, the same can be termed interlocutory order. In the instant case, marking of exhibit is a step in aid of proceedings, but the order is not challenged in this proceedings and considering the nature of reliefs claimed, the Revision Application is not maintainable.

[20] In view of above, this Revision Application fails and is dismissed. Notice is discharged. Interim relief stands vacated.

