

a supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. Therefore, I am of the opinion that when the respondent original accused has been released on regular bail and has not committed any breach of conditions imposed by the court, there are no reasons to exercise my power under section 439(2) of the Code of Criminal Procedure and cancel the regular bail granted in favour of the respondent- original accused.

b 6 In view of the above, the present application is meritless and the same deserves to be dismissed and is accordingly dismissed.

Result:- Application dismissed.

c

ABC 2016 (I) 511GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

d

(Rajesh H. Shukla, J.)

Criminal Appeal No. 1293 of 2011 With Criminal Appeal No. 1294 of 2011

Decided on 31 March, 2016

STATE OF GUJARAT

- Appellant(s).

Versus

e

OSMAN @ BABO HABIBBHAI DAL

- Respondent(s).

f

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 378 – Appeal against Acquittal – Indian Penal Code, 1860 – Sections 504 & 506(2) – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 3(1)(10) – No specific statement of complainant about the abuse – No corroboration – Witnesses had come to the scene of offence subsequently – Place of incident – occurred at the house of the Complainant and not at the public place – Held, Necessary ingredients for offence u/s 504 & 506(2), IPC are also not established – Acquittal upheld – Indian Evidence Act, 1872 – Section 3 – relevant fact. (Para 11)

g

(B) Code of Criminal Procedure, 1973 – Section 377 – Appeal for enhancement of the sentence – Indian Penal Code, 1860 – Section 324 – Bombay Police Act – Section 135 (1) – Conviction under – Nature of Injury – on the right thumb and right index finger – Observing manner, weapon used & injury – enhancement of sentence not considered – Appeal dismissed – Indian Evidence Act, 1872 – Section 3 – relevant fact. (Para 12)

h

(C) *Interpretation – "judicial discretion" – exercise of judgment by a Judge or court based on what is fair under the circumstances and guided by the rules and principles of law – a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right– The word "discretion" connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule – Black's Law Dictionary & Aero Traders (P) Ltd. v. Ravinder Kumar Suri – Referred. (Para 13)*

(D) *Jurisprudence – "Judicial Discretion" – Exercising of – Duty of the Court – judicious discretion has to be exercised depending upon the facts and circumstances as well as the material and evidence on record. (Para 13)*

Law of relief:- *Alleged offence under Atrocities Act occurred at the house of the Complainant and not at the public place.*

Held:- While recording the acquittal of the Respondent / Original Accused for the offence under the Atrocities Act, the court below has specifically referred to the testimony of the Complainant PW-2 at Exh.17 and also the testimony of the other witnesses - PW-3 at Exh.18 and PW-4 at Exh.19. As it transpires, the Complainant - PW-2 has not specifically stated about the abuse and there is no corroboration as discussed in the impugned judgment and order inasmuch as the other two witnesses - PW-3 and PW-4 have come to the scene of offence subsequently. Moreover, the incident is said to have occurred at the house of the Complainant and not at the public place, and the necessary ingredients for the other offence under Section 504 and 506(2) of IPC are also not established, and the court below has recorded the acquittal for the said offences, which does not call for any interference. (Para 11)

Similarly, Criminal Appeal No. 1294 of 2011, filed by the Appellant - State of Gujarat for enhancement of sentence also does not deserve any consideration. The court below while recording the conviction of the Respondent / Original Accused for the offence under Section 324 of the Indian Penal Code with reference to the manner in which the incident has occurred, weapon used and the injury, has recorded the conviction for the offence under Section 324 of IPC and sentenced him SI for one year and has also sentenced him SI for 6 months for the offence under Section 135(1) of the Bombay Police Act. The aspect of the sentence has been considered with

reference to the nature of injury and the other attending circumstances. (Para 12)

a

In case of Aero Traders (P) Ltd. v. Ravinder Kumar Suri. It has been observed:

b

"6.According to Black's Law Dictionary "judicial discretion" means the exercise of judgment by a Judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. The word "discretion" connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule,"

c

Therefore the judicious discretion has to be exercised depending upon the facts and circumstances as well as the material and evidence on record. (Para 13)

d

Counsel:- For Appellant(s): Ms. Hansa Punani, APP.
For Respondent(s): Rule Served.

Cases Referred:-

(2004) 8 SCCF 307 Aero Traders (P) Ltd. v. Ravinder Kumar Suri. (Para 13)

e

JUDGMENT

RAJESH H.SHUKLA, J.: - 1. Both the aforesaid Criminal Appeals are filed by the Appellant - State of Gujarat, challenging the impugned judgment and order rendered in Special (Atrocity Case) No. 5 of 2007 by the learned Special Judge, Jamnagar dated 30.6.2011.

f

2. Criminal Appeal No. 1293 of 2011 is filed by the Appellant - State of Gujarat under Section 378(1)(3) of the Code of Criminal Procedure challenging the acquittal of the Respondent / Original Accused for the offence under Sections 504 and 506(2) of the Indian Penal Code as well as for the offence under Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

g

3. Criminal Appeal No. 1294 of 2011 is filed by the Appellant - State under Section 377 of the Code of Criminal Procedure, 1973 for enhancement of the sentence for the offence under Section 324 of the Indian Penal Code and also under Section 135 of the Bombay Police Act.

h

4. Heard learned APP Ms. Hansa Punani for the Appellant - State of Gujarat in both the Appeals.

The facts of the case briefly summarized are as follows.

5. On 15.1.2007 the Respondent / Original Accused is said to have gone to the house of the complainant and called him out that the accused had a quarrel with third party and the complainant should support him. The Respondent / Original Accused is said to have taken the iron pipe from the house of the complainant and when the complainant declined to get involved into all these and put back the pipe, the Respondent / Original Accused is said to have gone away. However, after some time, the Respondent / Original Accused returned back armed with sword and is said to have abused the complainant that he had not supported him in his quarrel / altercation with third party, and assaulted the complainant, who received the injury on the right thumb and right index finger, for which the complaint being I-CR No. 18/2007 is registered with Jamnagar City 'B' Division Police Station.

6. On the basis of the complaint, the investigation was carried out and charge sheet came to be filed. The case was committed to the court of learned Special Judge as the charge for the Atrocities Act was also there. The learned Special Judge, Jamnagar proceeded with the trial, and after the recording of the evidence of the prosecution witnesses was over, also recorded the further statement of the Respondent / Original Accused under Section 313 of the Code of Criminal Procedure.

7. After hearing the learned APP as well as learned Advocate for the defence, the learned Special Judge, Jamnagar recorded the conviction of the Respondent / Original Accused for the offence under Section 324 of IPC as well as for the offence under Section 135 (1) of the Bombay Police Act and sentenced him as stated in detail in the impugned judgment and order.

The learned Special Judge, Jamnagar recorded the acquittal of the Respondent / Original Accused for the offence under Section 504 and 506(2) of the IPC and also for the offence under Section 3(1) (10) of the Atrocities Act.

8. Therefore both these Appeals, as stated above, are filed by the Appellant - State of Gujarat challenging the acquittal of the Respondent / Original Accused and for enhancement of the sentence where the conviction is recorded contending that the sentence awarded is too lenient.

9. Heard learned APP Ms. Hansa Punani for the Appellant - State of Gujarat in both the Appeals.

a

10. On scrutiny of the material and evidence on record and the reasons recorded by the court below, it cannot be said that there is any error which would call for any interference.

b 11. While recording the acquittal of the Respondent / Original Accused for the offence under the Atrocities Act, the court below has specifically referred to the testimony of the Complainant PW-2 at Exh.17 and also the testimony of the other witnesses - PW-3 at Exh.18 and PW-4 at Exh.19. As it transpires, the Complainant - PW-2 has not specifically stated about the abuse and there is no corroboration as discussed in the impugned judgment and order inasmuch as the other two witnesses - PW-3 and PW-4 have come to the scene of offence subsequently. Moreover, the incident is said to have occurred at the house of the Complainant and not at the public place, and the necessary ingredients for the other offence under Section 504 and 506 (2) of IPC are also not established, and the court below has recorded the acquittal for the said offences, which does not call for any interference.

c

Therefore, **Criminal Appeal No. 1293 of 2011** filed by the Appellant - State of Gujarat challenging the acquittal of the Respondent / Original Accused for offence under Sections 504 and 506(2) of IPC and also for the offence under Section 3(1)(10) under the Atrocities Act does not call for any interference. Therefore Criminal Appeal No.1293 of 2011 deserve to be dismissed and accordingly stands dismissed.

e

f 12. Similarly, **Criminal Appeal No. 1294 of 2011**, filed by the Appellant - State of Gujarat for enhancement of sentence also does not deserve any consideration. The court below while recording the conviction of the Respondent / Original Accused for the offence under Section 324 of the Indian Penal Code with reference to the manner in which the incident has occurred, weapon used and the injury, has recorded the conviction for the offence under Section 324 of IPC and sentenced him SI for one year and has also sentenced him SI for 6 months for the offence under Section 135(1) of the Bombay Police Act. The aspect of the sentence has been considered with reference to the nature of injury and the other attending circumstances.

g

h 13. It is well settled that normally the High Court as a Appellate Court would not interfere with the discretion exercised for the sentence unless it is said to be too lenient or perverse or contrary

to the statutory provisions providing for the minimum punishment. A useful reference can be made to the judgment of the Hon'ble Apex Court reported in (2004) 8 SCCF 307 in case of Aero Traders (P) Ltd. v. *Ravinder Kumar Suri*. It has been observed:

"6.According to Black's Law Dictionary "judicial discretion" means the exercise of judgment by a Judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. The word "discretion" connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule,"

Therefore the judicious discretion has to be exercised depending upon the facts and circumstances as well as the material and evidence on record. Therefore, Criminal Appeal No. 1294 of 2011 filed by the Appellant / State of Gujarat for enhancement in the sentence also cannot be entertained and deserve to be dismissed and accordingly stands dismissed.

14. For the reasons stated above, both the Criminal Appeals filed by the Appellant / State of Gujarat deserve to be dismissed and accordingly stands dismissed.

Result:- Appeals dismissed.

**ABC 2016 (I) 516 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(A.J. Desai, J.)

Criminal Misc.Application (For Regular Bail) No.5420 of 2016

Decided on 2 March, 2016

DEEPAK BABUBHAI SONI

- Applicant (s).

Versus

STATE OF GUJARAT

- Respondent(s).

Law Covered:- Code of Criminal Procedure, 1973 – Section 439 – Regular bail – Immoral Traffic (Prevention) Act, 1956 – Sections 3, 4, 5, 6, 7 & 9 – FIR under – Co-accused who is Manager

June 2016