

22.

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 42/2009

MADAN LAL Petitioner
Through : Mr. R.K. Wadhwa and Mr. Pradeep
Purohit, Advs.

versus

JAGBIR SINGH Respondent
Through : Mr. M.P. Singh, Adv. for the State.
Mr. Adv. for respondent no.1.
(Appearance not given)

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **Yes**
2. To be referred to the Reporter or not? **Yes**
3. Whether the Judgment should be reported in the Digest? **Yes**

ORDER
21.08.2009

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1. The present revision petition has been filed for setting aside the order dated 23.12.2008, passed by the learned Additional Sessions Judge, Dwarka Courts, New Delhi, in CA No.08/08 under Section 138 of the Negotiable Instruments Act, upholding the judgment dated 03.04.2008 and order on sentence dated 22.04.2008, by virtue of which, the petitioner was sentenced to undergo Simple Imprisonment for a period of six months and also to pay compensation in the sum of Rs.1.00 lakh to the complainant/Jagbir Singh (respondent herein).

2. Briefly stating, the facts relevant for disposal of the present petition are that the respondent (Jagbir Singh) had filed a criminal complaint under Section 138 of the Act, against the petitioner (Madan Lal), alleging therein that the petitioner was running a business of supplying building material with his brother-in-law, Dalbir Singh, under the name and style of M/s Haryana Building Material Suppliers at Dashrath Puri, New Delhi. At the request of the respondent (Jagbir Singh), the petitioner agreed to supply him building material for construction of his house on credit basis. As per the accounts, a sum of Rs.57,000/- was finally due and outstanding from the petitioner's side, payable to the respondent/complainant.
3. On 20.11.01, Ramesh the brother of the petitioner along with three other persons, namely, Mahesh Chand, Pramod Kumar and Kanhaya Lal came to the shop of respondent and gave an undertaking to pay the due amount of Rs.57,000/- by 25.01.2002 and in default to pay an additional sum of Rs.5,000/- as interest on the said amount. All of them signed an agreement to this effect on 20.11.201. Despite execution of the said agreement, the outstanding amount was not paid. Finally, a cheque dated 17.02.2002 bearing number 992361 drawn on Syndicate bank, Hari Nagar, New Delhi, in the sum of Rs.62,000/- was issued by the petitioner, in discharge of his liability towards the respondent, but the said cheque on presentation in the bank was dishonoured for the reason 'Account closed'. The respondent (Jagbir Singh) issued a legal notice dated 27.02.2002 which was duly served on the

petitioner, who though sent a reply but failed to pay the cheque amount.

4. A complaint case was filed by the respondent (Jagbir Singh) against the petitioner, wherein the petitioner was found guilty of the offence under section 138 of the Negotiable Instruments Act and sentenced to undergo SI for a period of six months and also to pay compensation in the sum of Rs.1.00 lakh to the respondent. The appeal filed by the petitioner was also dismissed and against which the present revision petition has been filed.
5. Be that as it may, during the pendency of this matter, parties have arrived at an amicable settlement, by virtue of which, the petitioner has paid a total sum of Rs.1.30 lakhs to the respondent (Jagbir Singh). In the case of ***B.C. Seshadri Vs. B.N. Suryanarayana Rao*** reported at **(2004) 11 SCC 510**, the Supreme Court allowed the compounding of an offence under section 138 of the NI Act. It was observed as under:

“3. The appellant before us was convicted by the XIIIth Additional Chief Metropolitan Magistrate, Bangalore for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to pay a fine of Rs 20,000 and in default to pay the same, to undergo simple imprisonment for four months.

5. During the pendency of this appeal the parties have settled their dispute which is recorded by this Court by order dated 18-8-2003. Now the appellant seeks for the compounding of the said offence. In view of the provision of Section 147 of the Negotiable Instruments Act, 1881 this Court in the case of *Anil Kumar Haritwal v. Alka Gupta*¹ has held that such a compounding of the offences on the basis of parties settling their dispute is permissible. Since the respondent states that he is willing to compound the offence, we allow the

appeal and direct that the offences be compounded as provided under Section 147 of the Negotiable Instruments Act, 1881.”

6. Similarly in the case of **G. Sivarajan Vs. Little Flower Kuries & Enterprises Ltd.** reported at **(2004) 11 SCC 400**, the Apex Court held as under:

“3. The respondent complainant who is represented through his counsel has filed an affidavit stating that his claim has since been settled and he has no objection if the matter is compounded under Section 147 of the Negotiable Instruments Act, 1881. Having perused the judgments and the contents of the affidavit filed by the complainant, we are satisfied that this is a case which could be compounded. The sentence imposed by the two courts below is set aside. We permit the parties to compound the offence under Section 147 of the Negotiable Instruments Act, 1881.”

7. It would also be relevant to reproduce section 147 of the NI Act, *“Offences to be compoundable- Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be compoundable.”* Thus as per section 147 of the NI Act and the settled position of law enunciated in the case of **B.C. Seshadri (supra) and G. Sivarajan (supra)**, and applying the same to the facts of this case, I find that in view of the settlement and compromise arrived at between the parties, no purpose would be served in keeping the matter alive, and the offence under section 138 of the NI Act against the petitioner, is compounded.

8. Accordingly, the present revision petition is allowed and the order dated 23.12.2008, passed by the learned Additional Sessions Judge, Dwarka Courts, New Delhi, in CA No.08/08

under Section 138 of the Negotiable Instruments Act, upholding the judgment dated 03.04.2008 and order on sentence dated 22.04.2008, is set aside.

9. Petition stands disposed of.

G.S. SISTANI, J.

August 21, 2009

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