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22.11.2010

Present: Mr.Rajat Wadhwa, Advocate for the petitioner.

Ms.Fizani Husain, APP for the State.

Mr.Rishi Sethi, Advocate for respondent No.2.

+Crl.Rev.P.No.682/2010

Rakesh Kumar Sharma, the petitioner herein has filed the instant revision petition challenging the impugned order of learned Metropolitan Magistrate dated 1.9.2010 which was confirmed by learned Additional Sessions Judge on 4.10.2010.

During the pendency of the revision petition, the parties are stated to have arrived at a settlement and they have compounded the case. Learned counsel for respondent No.2, on instructions from his client, submits that respondent No.2 has amicably settled the matter with the petitioner and pursuant to the settlement, the petitioner has paid to M/s Barclays Bank PLC., the settled amount and now nothing is due from the petitioner vis-a-vis the impugned cheque No.583659 dated 4.2.2009 for a sum of ₹77,820/-, which was the subject-matter of the complaint. Thus, it is submitted on behalf of the petitioner as well as respondent No.2 that the offence which is the subject-matter of the revision petition stands compounded and learned counsel for the petitioner requests for acquittal of the petitioner in view of the compounding of the offence under Section 138 of the Negotiable

Instruments Act.

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In the matter of **Damodar S. Prabhu vs. Sayed Babalal H.** AIR 2010 SC 1907, Hon'ble Supreme Court, after considering the provisions of the Negotiable Instruments Act observed that the offence under Section 138 of the Negotiable Instruments Act is compoundable even at the stage of appeal upto Supreme Court and certain guidelines were also framed for dealing with the matters relating to compounding after a prolonged trial. Said guidelines are reproduced thus:-

"THE GUIDELINES

- (i) In the circumstances, it is proposed as follows:
 - (a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.
 - (b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.
 - (c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.
 - (d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

Taking into account the provisions of Section 147 of the Negotiable Instruments Act, the guidelines enunciated by the Supreme Court in

Damodar S.Prabhu (supra) and the statement made by learned counsel for respondent No.2 at the Bar, the offence under Section 138 of the Negotiable Instruments Act stands compounded. Accordingly, the petitioner is acquitted of the charge, subject to payment of cost of ₹10,000/- to be deposited with the Delhi High Court Legal Services Committee within a week.

The Revision Petition is disposed of.


(AJIT BHARIHOKE)
JUDGE

NOVEMBER 22, 2010
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