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IN THE HIGH COURT OF DELHI AT NEW DELHI

DATE OF DECISION: 12th DECEMBER, 2013

+ **CRL.REV.P. 568/2013 & CRL.M.A.17943/2013**

SUNEEL MENON @ MOOKUL MARUTHUR SUNEEL.....

Petitioner

Through Mr. Vikram Choudhary, and Mr.
Raktim Gogoi, Advocates.

versus

STATE & ANR. Respondent

Through Ms. Asha Tiwari, APP for the State.
Mr. Vikas Arora and Mr. Aneesh
Dhingra, Advocates for R-2

+ **CRL.REV.P. 575/2013 & CRL.M.A.17942/2013**

SUNEEL MENON @ MOOKUL MARUTHUR SUNEEL.....

Petitioner

Through Mr. Vikram Choudhary, and Mr.
Raktim Gogoi, Advocates.

versus

STATE & ANR. Respondent

Through Ms. Asha Tiwari, APP for the State.
Mr. Vikas Arora and Mr. Aneesh
Dhingra, Advocates for R-2.

+ **CRL.REV.P. 580/2013 & CRL.M.A.17943/2013**

SUNEEL MENON @ MOOKUL MARUTHUR SUNEEL....

Petitioner

Through Mr. Vikram Choudhary, and Mr.
Raktim Gogoi, Advocates.

versus

STATE & ANR. Respondent

Through Ms. Asha Tiwari, APP for the State.
Mr. Vikas Arora and Mr. Aneesh
Dhingra, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: **SUNITA GUPTA, J.**

1. Vide this common judgment, I shall dispose of three Criminal Rev. Petitions bearing Nos. 568/2013, 575/2013, and 580/2013 u/s 397 read with Section 482 Cr.P.C challenging the impugned judgment dated 04.10.2013 passed by learned District and Sessions Judge, Saket, New Delhi.

2. The factual matrix of the case leading to the filing of the present revision petitions are as under:-

3. Petitioner/accused is the Chairman of Reminiscent (India) Television Ltd. He approached the complainant for settlement in civil suit bearing CS(OS)No.575/2005 pending in this Court for recovery titled as ***P.K.Bajaj vs. Remniscent (India) Television Ltd.*** for recovery of Rs. 90 lakhs. The suit was compromised for a sum of Rs.90 lakhs. The accused issued three cheques of Rs. 30 lakhs each and handed over the same to the complainant on 09.11.2006 in Patiala House Courts. On presentation, the cheques were dishonoured with remarks “funds insufficient”. Thereafter a legal notice was sent to the accused by the complainant calling upon him to make payment of the cheque amount. On failure of the accused to make payment of the cheque amount within the stipulated period, separate complaints u/s 138 of the Negotiable Instruments (for short “N.I”) Act were filed.

4. The accused was summoned. Notice u/s 251 Cr.P.C was served upon the accused to which he pleaded not guilty and claimed trial. After completing trial, vide order dated 08.02.2013, learned Metropolitan Magistrate convicted the petitioner for offence u/s 138 of the N.I Act. Vide order dated 14.03.2013, the petitioner was sentenced to undergo simple imprisonment for a period of 18 months and pay a compensation of the cheque amount along with interest at the rate of 9% from the date of filing of the complaint till that date, in default of payment of compensation, he was to undergo further simple imprisonment for 3 months.

5. Feeling aggrieved by this order, appeals were preferred before the learned District and Sessions Judge(South). However, the same were dismissed vide detailed order dated 04.10.2013. Challenging the said order, the present revision petitions have been filed.

6. During the pendency of the revision petition, an application u/s 482 Cr.P.C read with Section 147 of the N.I Act as well as 320(5) of the Cr.P.C has been filed by the petitioner stating therein that the parties have been in litigation with each other over certain commercial transactions which included arbitration proceedings, two criminal cases filed against the respondent at Mumbai and the present proceedings u/s 138 of the N.I Act initiated by the respondent against the petitioner. Now the parties have arrived at an amicable settlement and in pursuance thereof, a settlement

agreement has been executed on 26.11.2013. In view of the settlement arrived at between the parties, the parties be permitted to compound the offence and the petitioner be acquitted of the charges levelled against him. It was further prayed that in terms of the settlement arrived at between the parties, the Registrar General of this Court be directed to release the amount of Rs. 30 lakhs in favour of the respondent/complainant and return the balance amount of Rs. 30 lakhs to the petitioner out of the total amount of Rs. 60 lakhs lying deposited with the Registrar General of this Court. Further Trial Court be directed to release the FDR worth Rs. 30 lakhs in favour of the petitioner.

7. Counsel for respondent No.2, Mr. Vikas Arora, submitted that in terms of the settlement agreement, he has no objection to the disposal of the revision petition. Learned counsel for the petitioner placed reliance on ***K.M.Ibrahim v. K.P.Mohammed & Anr.***, 2009(14) Scale 262 for submitting that offence u/s 138 of the N.I Act can be compounded at any stage of the proceedings.

8. ***K.M.Ibrahim***(supra) was a case where the complaint was filed u/s 138 of the Negotiable Instruments Act and the conviction was upheld upto the High Court. Matter went to Supreme Court. The parties settled their disputes and it was observed as under:-

“9. The object of Section 320 Cr.P.C., which would not in the strict sense of the term apply to a proceeding under the Negotiable

Instruments Act, 1881, gives the parties to the proceedings an opportunity to compound offences mentioned in the table contained in the said section, with or without the leave of the court, and also vests the court with jurisdiction to allow such compromise. By virtue of Sub-section (8), the Legislature has taken one step further in vesting jurisdiction in the Court to also acquit the accused/convict of the offence on the same being allowed to be compounded. Inasmuch as, it is with a similar object in mind that Section 147 has been inserted into the Negotiable Instruments Act, 1881, by amendment, an analogy may be drawn as to the intention of the Legislature as expressed in Section 320(8) Cr.P.C., although, the same has not been expressly mentioned in the amended section to a proceeding under Section 147 of the aforesaid Act.

10. Apart from the above, this Court is further empowered under Article 142 of the Constitution to pass appropriate orders in line with Sub-section (8) of Section 320 Cr.P.C. in an application under Section 147 of the aforesaid Act, in order to do justice to the parties.

11. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. The various decisions cited by Mr. Rohtagi on this issue does not add to the above position.

12. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.

13. Since the parties have settled their disputes, in keeping with the spirit of Section 147 of the Act, we allow the parties to compound the offence, set aside the judgment of the courts below and acquit the appellant of the charges against him.”

9. This view was reaffirmed subsequently in *Damodar S. Prabhu v. Sayed Babalal H.*, (2010) 5 SCC 663.

9. Keeping in view the aforesaid judicial pronouncements, since offence u/s 138 of the N.I Act can be compounded at any stage of the proceedings and now the matter has been amicably settled between the parties, the parties are allowed to compound the offence.

10. Learned APP for the State, however, submitted that in view of the guidelines given by Supreme Court in *Damodar S. Prabhu* (supra), the petitioner should be directed to deposit 15% of the cheque amount in the Legal Aid. In this regard it is submitted by learned counsel for the petitioner that only guidelines were given, which are not mandatory in nature. Moreover, in the instant case there were multifarious litigations between the parties and by virtue of this litigation, all the pending litigations have come to an end. That being so, this is not a fit case where any such direction is warranted.

11. Learned counsel for respondent no.1 submitted that in view of the amicable settlement between the parties, he does not press for imposition of the cost.

12. *Damodar* (supra) was a case where appeals were preferred in respect of the litigation involving the offence u/s 138 of the N.I Act, 1881. The matter was compounded and as such the compounding was allowed. The conviction was set aside. However, a submission was made by the

Attorney General that majority of cheque bounce cases are being compromised or settled by way of compounding during the later stages of litigation thereby contributing to undue delay in justice delivery, as such certain guidelines are required to be given. As such following guidelines were given:-

“21(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.”

13. However, it was further observed that the imposition of cost by the Competent Court is a matter of discretion. The Competent Court can reduce the cost with regard to specific facts and circumstances of a case while recording reasons in writing for such inference.

14. Turning to the case in hand, a perusal of settlement agreement reflects that this was not the only litigation between the parties. Rather civil suit and arbitration proceedings between the parties are pending at Delhi whereas criminal cases were registered at Mumbai and, therefore, all the matters have been amicably settled between the parties. That being so, in the peculiar facts and circumstances, whereby not only the litigation pertaining to N.I Act, which is the subject matter of present litigation is settled, but other civil and criminal litigations between the parties has also come to an end, ends of justice will be met if the petitioner is directed to deposit a total cost of Rs. 1 lakh with State Legal Services Authority within a period of two weeks. Subject to deposit of this amount, the impugned order dated 04.10.2013 is set aside. The petitioner is acquitted of the offence alleged against him.

15. Pursuant to the directions given by Hon'ble Supreme Court, a sum of Rs. 60 lakhs was deposited by the petitioner with the Registrar General of this Court. As per the settlement, Registrar General is directed to release an amount of Rs. 30 lakhs in favour of the respondent/complainant and return the balance amount of Rs. 30 lakhs to the petitioner as per rules. FDR worth Rs. 30 lakhs is lying deposited with the Trial Court. Trial Court is also directed to release the aforesaid FDR in favour of the petitioner as per rules.

The revision petitions as well as the pending applications are accordingly disposed of.

**SUNITA GUPTA
(JUDGE)**

DECEMBER 12, 2013
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