

Court No. - 82

Case :- CRIMINAL REVISION No. - 4115 of 2023

Revisionist :- Mukesh Singh

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Sunil Kumar

Counsel for Opposite Party :- G.A.,Deep Chand Singh

Hon'ble Shiv Shanker Prasad,J.

Heard Mr. Sunil Kumar learned counsel for the revisionist, learned counsel for the opposite party no. 2 and the learned Additional Government Advocate for the State as well as perused the materials on record.

This criminal revision has been filed for setting aside the impugned judgment and order dated 09.06.2023 passed by learned Additional Session Judge, Khurja, District Bulandshahar in Criminal Appeal No. 1 of 2022 (Mukesh Singh Vs. State of U.P. & Another) and impugned judgment and order dated 25.11.2022 passed by learned Additional Chief Judicial Magistrate, Khurja, District Bulandshahar in Complaint Case No. 439 of 2018 (Vinod Kumar Vs. Mukesh Singh), under Section 138 of Negotiable Instruments Act.

On 08.08.2023, the Court has passed following order:

"Heard learned counsel for the revisionist and the learned A.G.A. for the State.

This revision has been filed for quashing the impugned judgment and order dated 09.06.2023 passed in Criminal Appeal No. 1 of 2022 (Mukesh Singh Vs. State of U.P. & Another) and the judgment and order dated 25.11.2022 passed in Complaint Case No. 439 of 2018 (Vinod Kumar Vs. Mukesh Singh), under Section 138 N.I. Act, Police Station Khurja Nagar, District Bulandshahar as well as to stay the effect and operation of the aforesaid orders.

It is submitted on behalf of the revisionist that both the parties are known to each other very well and the dispute between them is due to money. He further submits that on account of intervention of well-wishers of the revisionist and opposite party no.2, they have settled their disputes and arrived at a compromise. On the basis of said compromise, an application dated 20.07.2023 has been filed by opposite party no.2 and the revisionist before the court below that they do not want to press the criminal proceedings initiated by opposite party no. 2 against the revisionist. It is thus contended to

allow this revision and set aside the impugned judgment and order passed by the Trial Court on 09.06.2023 as well as 25.11.2022, under Section 138 of N.I. Act and he be acquitted.

Whether a compromise has taken place or not can at best be ascertained by the court, where the proceedings are pending, after ensuring the presence of the parties before it.

Put up this case on 22.09.2023 as fresh before the appropriate Bench.

Learned counsels for the parties undertake that they shall make a fresh compromise application before the court below within two weeks from today for verification of the aforesaid compromise. They further undertake to ensure their presence before the court below or any other transferee court, as the case may be, on 24.08.2023 and the court concerned, thereafter, shall ascertain the veracity of the compromise. If the said compromise is verified, the same shall be made part of the record and report to that effect, will be prepared and the parties would be allowed to obtain certified copy thereof and file the same before this Court.

Office is directed to send through FAX a copy of this order within 24 hours.

Parties are also directed to produce certified copy of this order along with a fresh compromise application before the court concerned within a week from today.

Till the next date of listing, no coercive steps would be taken against the revisionist in pursuance of the impugned judgment and orders dated 09.06.2023 and 25.11.2022."

Pursuant to the above order, the learned Additional Chief Judicial Magistrate, Khurja, District Bulandshahar vide order dated 09.10.2023 has verified the compromise so entered into between the parties. Certified copies of the order of the learned Additional Chief Judicial Magistrate, Khurja, District Bulandshahar vide order dated 09.10.2023 and the compromise have been placed along with the order sheet.

Learned counsel for the revisionist submits that in view of compromise so entered into between the parties, which has also been verified by the concerned Magistrate, the entire proceedings of the aforesaid case are liable to be quashed.

Learned counsel for opposite party no.2 has also not denied the aforesaid facts. On instructions received from opposite party no.2, he submits that he has no objection, if the proceedings in the aforesaid case are quashed.

Having considered the submissions made by the learned counsel for the parties and gone through the records of the present criminal

revision, this Court is of the considered opinion that since both the parties have entered into compromise and the same has also been verified by the court below referred to above, no purpose would be served by keeping the entire criminal proceedings pending, which culminated into the judgment and orders of the appellate court as well as concerned Magistrate convicting the revisionist.

9. This Court is not unmindful of the following judgements of the Apex Court:

B.S. Joshi and others Vs. State of Haryana and Another; (2003)4 SCC 675,

2. Nikhil Merchant Vs. Central Bureau of Investigation; (2008) 9 SCC 677,

3. Manoj Sharma Vs. State and Others; (2008) 16 SCC 1,

4. Gian Singh Vs. State of Punjab; (2012); 10 SCC 303,

5. Narindra Singh and others Vs. State of Punjab; (2014) 6 SCC 466,

6. State of Madhya Pradesh Vs. Laxmi Narayan & Ors.; (2019) 5 SCC 688, and

7. Arun Singh & Others Vs. State of U.P. & Another; (2020) 3 SCC 376.

In the aforesaid judgments, the Apex Court has categorically held that compromise can be made between the parties even in respect of certain cognizable and non compoundable offences. Reference may also be made to the decision given by this Court in **Shaifullah and Others Vs. State of U.P. & Another; 2013 (83) ACC 278.** in which the law expounded by the Apex court in the aforesaid cases has been explained in detail.

However, for quashing the entire criminal proceedings which have been initiated by opposite party no.2 against the revisionist which culminated into the judgment and orders of the appellate court as well as concerned Magistrate convicting the revisionist, an issue is cropped up before this Court as to whether this Court while exercising its revisional power under Section 397/401 of Code of Criminal Procedure can quash the same or not on the basis of compromise so entered into between the parties?.

The Apex Court in the case of **Popular Muthiah Vs. State**

Represented By Inspector of Police reported in (2006) 7 SCC 296
in paragraph nos. 29 and 30 has held as follows:

"29. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

30. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammled by procedural restrictions in that

(i) power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists."

(Emphasis supplied)

Again in paragraph no. 13 of the judgment of the Apex Court in the case of Ramgopal & Another Vs. State of Madhya Pradesh along with connected case reported 2021 SCC OnLine 834 has opined as follows:

"13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post- conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit

ought to be extended, as cautiously observed by this Court in Narinder Singh & Ors. Vs. State of Punjab Ors. And and Laxmi Narayan (Supra)."

This Court is of the considered opinion that the aim and object of law is not only to punish the culprit, but, the objective of the law is also to maintain peace, tranquility, prosperity and harmony in society as well as in the country. If there is a compromise between two parties and they are living happily, then such demeanour should encouraged as it tends to promote social harmony. Tranquil setting where there is no conflict or animosity among the citizens of any country is a vital part of society, which enables the citizens to find stability in life and live harmoniously. But as soon skirmish erupt between two persons it often assume serious proportions, resulting in commission of heinous crimes in which family members/relatives/neighbours/friends are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging the litigation cropped up due to money so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

In view of the aforesaid discussion, the parties, in reference to offence under Section 138 N.I. Act read with Section 147 of the said Act are at liberty to compound the matter at any stage. The complainant i.e. the person or persons affected can pray to the court that the accused, on compounding of the offence may be released by invoking jurisdiction of this Court under Section 397/401 Cr.P.C.

Generally, the powers available under Section 397/401 Cr.P.C. would not have been exercised when a statutory remedy under the law is available, however considering the peculiar set of facts and circumstances it would not be in the interest of justice to relegate the parties to appellate court. Additionally when both the parties have invoked the jurisdiction of this Court and there is no bar on exercise of powers and then the inherent powers of this court can always be invoked for imparting justice and bringing quietus to the issue between the parties.

Accordingly, the present petition under Section 397/401 Cr.P.C. is allowed in terms of the compromise arrived at between the parties to this litigation out of court. The conviction and sentence under

Section 138 N.I. Act 1981 in Complaint Case No. 439 of 2018 (Vinod Kumar Vs. Mukesh Singh), under Section 138 of Negotiable Instruments Act stands annulled as this court intends, otherwise to secure the ends of justice as provided under Section 397/401 Cr.P.C. The revisionist shall be treated as acquitted on account of compounding of the offence with the complainant/person affected.

Order Date :- 19.10.2023

SK Srivastava