Neutral Citation No. - 2024:AHC-LKO:79185

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10746 of 2024

Applicant :- Dharamveer Yadav
Opposite Party :- State Of U.P Thru. Prin. Secy. Home Civil Sectt. Lko And 2 Others
Counsel for Applicant :- Arvind Kumar Yadav
Counsel for Opposite Party :- G.A.,Amit Kumar Dwivedi

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the applicant, Sri Amit Kumar Dwivedi, learned counsel for the respondent as well as learned AGA for the State and perused the record.

2. The present application has been filed for the following main relief:-

> *"Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to set aside/quash the charge sheet no. 33/2015 and cognizance/summoning order dated 14.5.2015 passed by the learned special judge ADJ-4/E.C. Act, Lucknow, against the Petitioner, in Criminal Case No. 0164/2015 (State of U.P. versus Dharamveer Yadav) under sections 135 of the electricity Act, Police Station-Krishna Nagar, District- Lucknow and to quash the entire proceeding thereto, in the interest of justice."*

3. Brief facts, which are relevant for disposal of present application, are as under:-

(i) An FIR, registered as Case Crime No.19 of 2015, was lodged on 16.01.2015 under Section 135 of Electricity Act, 2003 (in short "Act of 2003") against applicant including other persons at P.S.-Krishna Nagar, District-Lucknow.

(ii) The Investigating Officer (in short "I.O."), in relation to Case Crime No.19 of 2015, after due investigation, submitted the charge sheet No.33 of 2015 under Section 135 of the Act of 2003 against the applicant.

(iii) Vide order dated 14.05.2015 the Special Judge, A.D.J.-4/E.C. Act, Lucknow summoned the applicant.

(iv) The applicant has deposited the compoundable amount as also the mitigation fees assessed by the Executive Engineer and Assessee Officer on 03.10.2015 vide letter No.3283 issued by the opposite party No.2/Madhayanchal Vidyut Vitaran Nigam Ltd., Lucknow, as appears from Annexure No.5 to the present application.

(v) The fact that entire due amount has been deposited has not been disputed.

4. Learned counsel for the applicant says that taking note of the fact that entire due amount has already been deposited as also provisions under Section 152 of the Act of 2003, present application be decided in terms of the aforesaid compounding and the pending criminal proceedings including summoning order and charge sheet be quashed.

5. Section 152 of the Act of 2003 provides compounding, which on reproduction reads as under:-

> *"**Section 152. (Compounding of offences):** --- (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this*

Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

Nature of Service- *Rate at which the sum of money for Compounding to be collected per Kilowatt(KW)/Horse Power(HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)*

(1)	(2)
1. Industrial Service	twenty thousand rupees;
2. Commercial Service	ten thousand rupees;
3. Agricultural Service	two thousand rupees;
4. Other Services	four thousand rupees:

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer."

6. The Hon'ble Apex Court in the case of **Md.Abdul Sufan Laskar & others Vs State of Assam reported in 2008 AIR SCW 5755,** observed as under:-

"10. The learned counsel for the appellants submitted that the parties have compromised the matter, entered into settlement and an application is made to that effect praying therein that compounding may be

ordered for offences punishable under Sections 147 and 324, IPC and an appropriate order in accordance with law may be passed. Compromise deed is also placed on record signed by the parties wherein it is expressly stated that the injured Abdul Haque Laskar has voluntarily given his consent without any force, threat, coercion, undue influence, pressure etc., from any quarter whatsoever for making the joint compromise petition before this Court. A prayer is, therefore, made by all the parties to compound the offence and acquit the three appellants who have approached this Court.

11. Now it is no doubt true that every crime is considered to be an offence against the society as a whole and not only against an individual even though an individual might have suffered thereby. It is, therefore, the duty of the State to take appropriate action against the offender. It is equally the duty of a Court of law administrating criminal justice to punish a criminal.

12. But there are offences and offences. Certain offences are very serious in which compromise or settlement is not permissible.Some other offences, on the other hand, are not so serious and the law may allow the parties to settle them by entering into a compromise. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to an act as an inducement for his abstaining from proceeding further with the case [Vinjay Devanna Nayak v. Ryot Sewa Sahkari Bank Ltd., (2008) 2 SCC 305].

13. So far as the Code is concerned, Section 320 deals with offences which are compoundable, either by the parties without the leave of the Court or by the parties but only with the leave of the Court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the Court, while sub-section (2) of the said section specifies the offences which are compoundable with the leave of the Court. Sub-section (9) of Section 320 declares; "No offence shall be compounded except as provided by this section". It is thus clear that offences not referred to in sub-sections (1) and (2) of Section 320 and not included in the Table are not compoundable. Similarly, offences punishable under laws other than the Indian Penal Code also cannot be compounded.

> *16. It is no doubt true as stated by the learned counsel for the appellants even at the time of preliminary hearing of this matter that by the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) the above entry has been deleted. In other words, an offence of voluntarily causing hurt by dangerous weapons or means punishable under Section 324, IPC is no more compoundable. The Amendment Act of 2005 came into force from June 23, 2006.*
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> *17. As we have already noted, according to the prosecution, the appellants had committed the offence on June 15, 1995. In view of the above fact, in our opinion, Act 25 of 2005 has no application to the facts of the case. We, therefore, see no ground to refuse permission as sought by the parties who have compromised the offence which was compoundable under the Code as it stood in 1995. If it is so, compounding can be permitted and accused (appellants) can be acquitted.*
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> *18. For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compounded by compromise between the parties and there is no illegality therein, such compounding can be permitted by the Court. The appellants are, hence, entitled to acquittal."*

7. Considering the similar provision i.e., Section 147 of the Negotiable Instrument Act (in short N.I. Act), the Hon'ble Apex Court in the case of ***K.M. Ibrahim v. K.P. Mohammed : (2010) 1 SCC 798*** permitted the compounding of offence under Section 138 of N.I. Act and set aside the judgment of conviction and acquitted the accused/appellant.

8. Similarly in the case of ***Raj Reddy Kallem v. The State of Haryana & Anr.: 2024 SCC Online SC 833,*** the Hon'ble Apex Court permitted the compounding after judgment of conviction, which can be deduced from the following paragraphs:-

> *"10. The significant fact here is that pending appeals before Additional Sessions Judge against the appellant's conviction under Section 138 of the NI Act, initially both the sides had entered into a settlement in the*

Lok Adalat, where they agreed that if the appellant compensates the complainant by repaying the entire amount of Rs.1.55 crore then they would get the offences compounded or quashed. However, the trial court by order dated 11.07.2016 declared the settlement as frustrated on the ground that the appellant could not pay the complainant on the deadlines stipulated in the said settlement and the trial court might have been right in doing so because settlement itself had a clause which read as follows:

"5. That in case of default of making payment well in time according to dates mentioned above, the settlement shall be frustrated with immediate effect and then appeal shall be decided on merit."

Be that as it may, it is also true that the complainant had accepted the amount from the appellant later when the appellant approached higher courts showing his willingness to pay the amount as agreed between the parties.

11. As per section 147 of the NI Act, all offences punishable under the Negotiable Instruments Act are compoundable. However, unlike Section 320 of CrPC, the NI Act does not elaborate upon the manner in which offences should be compounded. To fill up this legislative gap, three Judges Bench of this Court in Damodar S. Prabhu v. Sayed Babalal H. (2010) 5 SCC 663, passed some guidelines under Article 142 of the Constitution of India regarding compounding of offence under Section 138 of NI Act. But most importantly, in that case, this Court discussed the importance of compounding offence under Section 138 of the NI Act and also the legislative intent behind making the dishonour of cheque a crime by enacting a special law. This Court had observed that:

"4. ..... What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions.

5. Invariably, the provision of a strong criminal remedy has encouraged the institution of a large number of cases that are relatable to the offence contemplated by Section 138 of the Act. So much so, that at present a disproportionately large number of cases involving the dishonour of cheques is choking

our criminal justice system, especially at the level of Magistrates' Courts....."

Further, after citing authors pointing towards compensatory jurisprudence within the NI Act, this Court observed that:

"18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect."

12. This Court has time and again reiterated that in cases of section 138 of NI Act, the accused must try for compounding at the initial stages instead of the later stage, however, there is no bar to seek the compounding of the offence at later stages of criminal proceedings including after conviction, like the present case (See: K.M Ibrahim v. K.P Mohammed & Anr. (2010) 1 SCC 798 and O.P Dholakia v. State of Haryana & Anr. (2000) 1 SCC 762).

In the case at hand, initially, both sides agreed to compound the offence at the appellate stage but the appellant could not pay the amount within the time stipulated in the agreement and the complainant now has shown her unwillingness towards compounding of the offence, despite receiving the entire amount. The appellant has paid the entire Rs.1.55 crore and further Rs.10 lacs as interest. As far the requirement of 'consent' in compounding of offence under section 138 of NI Act is concerned, this Court in JIK Industries Limited & Ors. v. Amarlal V. Jamuni & Anr. (2012) 3 SCC 255 denied the suggestion of the appellant therein that 'consent' is not mandatory in compounding of offences under Section 138 of NI Act. This Court observed that:

"57. Section 147 of the Negotiable Instruments Act reads as follows:

"147.Offences to be compoundable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

58. Relying on the aforesaid non obstante clause in Section 147 of the NI Act, the learned counsel for the appellant argued that a three-Judge Bench decision of this Court in Damodar [(2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] , held that in view of non obstante clause in Section 147 of the NI Act, which is a special statute, the requirement of

consent of the person compounding in Section 320 of the Code is not required in the case of compounding of an offence under the NI Act.
59. This Court is unable to accept the aforesaid contention for various reasons....."

Further this Court observed in para 89 of the said judgement that:

"Section 147 of the NI Act must be reasonably construed to mean that as a result of the said section the offences under the NI Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of the NI Act."

This Court in Meters and Instruments private Ltd. And Another. v. Kanchan Mehta (2018) 1 SCC 560 after discussing the series of judgments including the JIK Industries Ltd. (supra) observed that even in the absence of 'consent' court can close criminal proceedings against an accused in cases of section 138 of NI Act if accused has compensated the complainant. The exact words of this Court were as follows:

"18.3. Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused."

In our opinion, Kanchan Mehta (supra) nowhere contemplates that 'compounding' can be done without the 'consent' of the parties and even the above observation of Kanchan Mehta (supra) giving discretion to the trial court to 'close the proceedings and discharge the accused', by reading section 2581 of CrPC, has been held to be 'not a good law' by this Court in the subsequent 5 judges bench judgement in Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, (2021) 16 SCC 1162.

All the same, in this particular given case even though the complainant has been duly compensated by the accused yet the complainant does not agree for the compounding of the offence, the courts cannot compel the complainant to give 'consent' for compounding of the matter. It is also true that mere repayment of the amount cannot mean that the appellant is absolved from the criminal liabilities under Section 138 of the

NI Act. But this case has some peculiar facts as well. In the present case, the appellant has already been in jail for more than 1 year before being released on bail and has also compensated the complainant. Further, in compliance of the order dated 08.08.2023, the appellant has deposited an additional amount of Rs.10 lacs. There is no purpose now to keep the proceedings pending in appeal before the lower appellate court. Here, we would like to point out that quashing of a case is different from compounding. This Court in JIK Industries Ltd.3 (Supra) distinguished the quashing of case from compounding in the following words:

"Quashing of a case is different from compounding. In quashing the court applies it but in compounding it is primarily based on consent of the injured party. Therefore, the two cannot be equated."

In our opinion, if we allow the continuance of criminal appeals pending before Additional Sessions Judge against the appellant's conviction then it would defeat all the efforts of this Court in the last year where this Court had monitored this matter and ensured that the complainant gets her money back.

13. As far as FIR case under Sections 406, 420, 120B of IPC against the appellant is concerned, in any case we do not find any merit in the allegations that the appellant from the very beginning had the intention of cheating the complainant. It is a fact that the appellant failed to procure and supply the 'machine' even after taking the advance money from the complainant but there is nothing on record to show that the appellant had any ill intention of cheating or defrauding the complainant from the very inception. The transaction between the parties was purely civil in nature which does not attract criminal law in any way.

14. Even though complainant is unwilling to compound the case but, considering the totality of facts and circumstances of the present case which we have referred above, we are of the considered view that these proceedings must come to an end. We, therefore, allow this appeal and set aside the impugned order of High Court dated 29.11.2022. We also quash all the criminal proceedings qua appellant arising out of FIR No.35 of 2014 at P.S Mahesh Nagar, Ambala pending before Chief Judicial Magistrate, Ambala. Since, criminal appeals filed by present appellant against his conviction under Section 138 of the NI Act are also pending, we deem it

> *appropriate that the said proceedings should also be quashed. Hence, in order to do complete justice, we exercise our powers under Article 142 of the Constitution of India, and hereby quash all the pending criminal appeals on the file of Additional Sessions Judge, Ambala Cantt., against the appellant in the present matter, and set aside the conviction and sentence awarded to the appellant by the trial court.*
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> *15. We also direct the trial court to hand over the Demand Drafts totalling the amount of Rs.30 lacs to the complainant which were deposited in the trial court in pursuance of this Court's orders, if not handedover till now.*
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> *Pending application(s), if any, stand(s) disposed of."*

9. Taking note of observations made by the Hon'ble Apex Court in the judgment(s), referred above, and Section 152 of the Act of 2003 and the fact that offence under the Act of 2003 has been compounded, this Court is of the view that the instant application is liable to be allowed. It is accordingly ***allowed*** and the impugned order dated 14.05.2015 passed by the Special Judge, A.D.J.-4/E.C. Act, Lucknow is hereby set aside and the pending criminal proceedings arising out of Case Crime No.19 of 2015 are also hereby quashed.

10. Office is directed to send the copy of this judgment to trial Court concerned forthwith for necessary compliance.

Order Date :- 29.11.2024
Vinay/-

Digitally signed by :-
VINAY KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench