

CRIMINAL WRIT PETITION NO. 982 OF 2015

Mr. M.J. Bhatt i/b. Mr. O.S. Kutty for the Petitioners.
Mr. Jatin Shah, Amicus Curiae.
Ms. S.V. Gajare, A.P.P. for the State.

DATE : 8th DECEMBER, 2015.

1. This Petition challenges concurrent orders passed by the Courts below, refusing to allow compounding of the offence and discharge the petitioner-accused. The facts leading to the litigation in short can be stated as under :-

2. The petitioner availed loan from respondent No.1 and to repay the loan amount he issued various cheques. First few cheques were honoured and but later few cheques failed. This case arose from one of the failed cheques.

3. A notice under Section 138 of Negotiable Instruments Act was issued on 17.05.2012 and was served on the petitioner on 18.05.2012. Since the amount of cheque was not paid within 15 days, the complaint was lodged on 26.06.2012. On 28.10.2012, summons were issued directing the petitioner-accused to remain present on 07.11.2012. On that day, the petitioner-accused showed his willingness to pay the cheque amount and requested the Court to discharge him. The Court refused to do so. The parties went up to the Supreme Court and the Supreme Court passed the following order on 04.04.2014.

“Notice in this matter was issued on 04.10.2013 but there is no appearance on behalf of the respondents.

In such circumstances, we are inclined to dispose of this petition for special leave.

This Court in *Damodar S. Prabhu v. Sayed Babalal H.*, reported in AIR 2010 SC 1907, laid down certain guidelines for compounding offences under Section 138 N.I. Act. Learned senior counsel for the petitioner brought to our knowledge the guideline 1(b) of the same, which is extracted below :-

(i) (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.”

Learned senior counsel further submitted that the petitioners are willing to deposit 10% of the cheque amount with interest from the date of the cheque to the date of presentation of the draft.

If the petitioners deposit the said amount with the rate of interest claimed, within a period of one month, before the Magistrate Court, the Court will examine the prayer for compounding the offence in accordance with law. We make it clear that if the amount, as mentioned above, is not deposited within the time stipulated the benefit of this order will not be available to them.

The special leave petition is, accordingly, disposed of. ”

4. The petitioners then offered to pay more amount for compounding of the case. But the offer was made unilaterally. But the complainant clearly mentioned in his reply that he was not willing to compound the case. The learned Magistrate refused to pass order favourable to the petitioner. The learned Sessions Judge also refused to interfere.

The law on this subject is discussed at length at least in two judgments of Supreme Court. i) **C.C. Alavi Haji v. Palapetty Muhammed & Anr.** 2007 DGLS(Soft.)622 in the Supreme Court of India.

ii) **Damodar S. Prabhu v. Sayed Babalal H.,** 2010 DGLS(Soft.)257 in the Supreme Court of India.

5. On perusal of these two judgments one would lead to following conclusions.

i) In case an accused comes to Court within 15 days from the date of service of summons with a plea that he had not received notice and he was ready and willing to deposit the amount, the Court may upon examining of truthfulness of his plea would accept it and dismiss the complaint.

ii) In the judgment of Damodar's case explained as to in what manner the compounding of the case should be permitted by the Court.

iii) A plea for compounding should to be made by both the parties viz. the complainant and the accused. It cannot unilateral. Having regard to these conclusions, the petitioner had difficulty in getting favourable order. The complainant rather unusually continued his refusal to join the plea of compounding. Even today the complainant is not willing to accept the amount and drop the proceeding. So there is nothing wrong in the impugned orders when they said that compounding is impermissible if application is unilateral.

But this Petition also seeks interference from this Court utilizing powers under Section 482 of Cr.P.C.. Section 482 of Cr.P.C. reads as under :-

“– Saving of inherent power of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

6. The learned counsel for the petitioner urged the Court to quash the complaint mainly because it now amounted to abuse of process. This Court exercises its powers under Section 482 in three situations. i) to give effect to any order passed under the Cr.P.C., ii) to prevent abuse of process and, iii) to secure the ends of justice. Apparently, the plea of the petitioner-accused appears reasonable and conciliatory. But if the complainant is not accepting it, does it amount to abuse of process? In my view, it does not. A judge cannot insist on a complainant not to continue prosecution no matter how unreasonable the conduct of the complainant appears. The judge at the most might persuade such complainant not to continue his case. But the Judge would never assume that continuation of the prosecution would be abuse of process. In

this case I can not come to such conclusion. An offence u/s138 is already committed. The complaint is lodged only after offence was committed. Complainant is generally a victim. He comes to Court for redressal of his grievance. He is free to decide when to stop.

7. Before conclusion of the judgment, I must express my gratitude to learned counsel Mr. Jatin Shah for his research on the subject and help rendered to the Court.

8. The Writ Petition is dismissed.

(A.V. NIRGUDE, J.)

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