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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 18th September, 2015

+ **CRL.A.No.460/2002**

BELA SHARDA

..... Appellant

Represented by: Mr.Samar Banal and Mr. Vinayak
Mehrotra, Advocates with
Appellant in person.

Versus

STATE AND ANR

..... Respondents

Represented by: Mr.Amit Chadha, Additional
Public Prosecutor for the State.
Mr.Samar Banal and Mr. Vinayak
Mehrotra, Advocates for
Respondent No.2 with Respondent
No.2 in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A. No. 13643/2015 (Under Section 147 NI Act)

1. The present application has been filed jointly on behalf of the appellant and the respondent No.2 seeking directions for compounding of C.C. No.79/2002 (Old No. 414-1/21.04.1999) under Sections 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), titled as 'Sh. Wazir Singh Dahiya Vs. Mrs. Bela Sharda', decided on 07.05.2002 alongwith order on sentence dated 08.05.2002 passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi, and all the proceedings

emanating therefrom.

2. The respondent No.2 is personally present in Court with his counsel, who is also representing the petitioner herein. For his identification, he has produced on record the photocopy of the Identity Card bearing No.XHC0674721 issued by the Election Commission of India (original seen and returned).

3. Learned counsel appearing on behalf of the petitioner and the respondent No.2 submits that the petitioner and the respondent No.2 have amicably settled their disputes vide settlement deed dated 16.09.2015 and have agreed to remain bound by the same. The same is annexed as Annexure-A to the instant application.

4. To support his submissions, he has relied upon the case of ***Manohar Singh Vs. State of Madhya Pradesh & Another***¹, wherein the Double Bench of the Apex Court held as under:-

“7. In Narinder Singh v. State of Punjab JT 2014 (4) SC 573, this Court was dealing with a situation where the accused was charged for offence punishable Under Section 307 of the Indian Penal Code, which is a non-compoundable offence. The parties arrived at a compromise at the stage of recording of evidence. A petition was filed Under Section 482 of the Code for quashing of the proceedings in view of the compromise. The High Court refused to quash the proceedings. This Court set aside the High Court's order and quashed the proceedings in view of the compromise. While doing so, this Court laid down certain guidelines. In Guideline No. (VII), this Court considered a situation where a conviction is recorded by the trial court for offence punishable Under Section 307 of the Indian Penal Code and

¹ (2014) 13 SCC 75

the matter is at appellate stage. This Court observed that in such cases, a mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. This Court observed that in such cases where charge is proved Under Section 307 of the Indian Penal Code and conviction is already recorded of a heinous crime, there was no question of sparing a convict found guilty of such a crime. The observation of this Court must be read obviously in the context of a non-compoundable offence Under Section 307 of the Indian Penal Code. It is trite that a non-compoundable offence cannot be compounded at any stage (See Gyan Singh v. State of Punjab (2012) 10 SCC 303). However, a compoundable offence can be compounded in view of a compromise, if the Court finds it proper to do so even after conviction if the appeal is pending.”

5. On the other hand, learned Additional Public Prosecutor appearing on behalf of the respondent State submits that in view of the guidelines framed by the Apex Court in case of ***Damodar S. Prabhu Vs. Sayed Babalal H²***, while allowing compounding at a subsequent stage, the appellant may be directed to deposit 15% of the cheque amount as costs in favour of the Legal Services Authority. Thus, the State has no objection if the present petition is allowed provided the appellant fulfils the aforesaid condition.

6. The relevant portion of the aforestated judgment reads as follows:-

“21. With regard to the progression of litigation in cheque bouncing cases, the learned Attorney

² (2010) 5 SCC 663

General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:

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.”

7. Both the parties who are present in the Court today, approbate the aforesaid settlement dated 16.09.2015 and undertake to remain bound by the same.

8. Keeping in view the legal position as discussed above, settlement arrived at between the parties and the fact that the respondent No.2/complainant does not wish to pursue this case further against the appellant and the statement of learned Additional Public Prosecutor for the State, I am of the considered opinion that this matter deserves to be given a quietus as continuance of the same would be an exercise in futility.

9. Consequently, the present application is allowed.

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10. In view of the above discussion, both the aforesaid orders dated 07.05.2002 and order on sentence dated 08.05.2002 passed by the learned Additional Sessions Judge, alongwith the proceedings emanating therefrom are hereby set aside.

11. Accordingly, the appellant is directed to pay an amount of Rs.25,000/- in favour of Delhi High Court Legal Services Committee within one week. Proof of the same shall be placed on record under intimation to the learned Additional Public Prosecutor for the State.

12. In view of the above, the present appeal stands disposed of.
13. The next date of hearing, i.e., 24.09.2015 is hereby cancelled.
14. A copy of this order be given *dasti* to the learned counsel for the parties.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 18, 2015
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