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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.Rev.P. 521/2015 & Crl.M.A.14772/2015**

Date of decision: 07.10.2015

RAJBIR SINGH UPPAL Petitioner
Through: Mr.M.A. Niyazi, Ms.Anamika Ghai
and Mr. N. Yazi, Advs.

versus

COOKE & KELVEY P.LTD. Respondent
Through: Mr.H.R. Khan Suhel, Mr.Samar Khan
and Mr. Abhishek Bakshi, Advs.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. With the consent of the parties, the revision petition has been taken up for final disposal.
2. The petitioner has invoked the revisional jurisdiction of this Court challenging the judgment and order of conviction dated 18.12.2013/16.1.2014 whereby the learned magistrate convicted the petitioner under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') and sentenced him to undergo imprisonment for one year and pay the compensation of Rs.8,70,000/-; as also the judgment and order passed in appeal dated 20.7.215 passed by the Additional Sessions Judge, New Delhi in Criminal Appeal No.08/2014, by which the Trial Court Judgment has been upheld.
3. During the pendency of the aforesaid revision petition, Crl. M.A. No.14772/2015 has been filed seeking compounding of offence

with the respondent. It has been stated therein that the petitioner and the respondent have settled their dispute of their own free will and the petitioner has agreed to pay a sum of Rs.12 lakhs towards full and final settlement of his claim against the petitioner which is the subject matter of the dispute. It is further stated that Rs.12 lakhs have been paid today in cash to the respondent.

4. Learned counsel appearing for respondent has testified to the above assertion of the petitioner.

5. The aforesaid amount, which has been paid by the petitioner to the respondent, takes into account the litigation expenses and cost as well.

6. Section 147 of the Negotiable Instruments Act reads as under:

“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.”

7. In several judgments of the Supreme court and this court, it has been held that in view of non-obstante clause appearing in Section 147 of the NI Act, 1881, the compounding of the offence under the said Act is controlled by the aforesaid section only and is not contingent or dependent on the provisions /scheme contemplated under section 320 of the Cr.P.C.

8. While dealing with this issue, the Supreme Court of India in ***Damodar S. Prabhu vs. Sayed Babalal H., (2010) 5 SCC 663*** has held that compounding of the offence at later stages of litigation in a cheque bouncing cases is permissible.

9. A reference in the aforesaid case has been made of ***Vinay Devanna Nayak vs. Ryot Sewa Sahakari Bank Ltd., (2008) 2 SCC 305*** wherein the Supreme Court had an occasion to examine whether an offence punishable under Section 138 of the NI Act, which is a special law, could be compounded.

10. The Supreme Court was of the view that the provision is only intended to prevent dishonesty on the part of the drawer of the Negotiable Instrument in issuing cheques without sufficient funds or with a view to induce a payee or holder in due course to act upon it. It only seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. It was held that in such matters, there should not be any denial for compounding of offences. The aforesaid view has been reiterated by the Supreme Court in ***K.M.Ibrahim vs. K.P.Mohammad and Another, (2010) 1 SCC 798***.

11. The Parliament, realising this aspect, has inserted section 147 of the NI Act.

12. In Damodar S. Prabhu (supra), the following guidelines have been issued by the Supreme Court with respect to compounding.

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.

13. However, in *J.K.Industries Limited and Ors vs. Amarlal V.Jumani & Anr.* (2012) 3 SCC 255, it has been clarified by the Supreme Court that in *Damodar S.Prabhu (Supra)*, the Supreme Court harmonized the provision of Section 320 Cr.P.C with Section 147 of the N.I.Act by saying that an otherwise non-compoundable case would be compounded in view of Section 147 of N.I.Act. The guidelines in *Damodar S.Prabhu (Supra)* have been issued by the Supreme Court under Article 142 of the Constitution in order to fill up the legislative vacuum which exists in Section 147 of the N.I.Act, which does not spell out any procedure for compounding. It was thus explained that Section 147 of the N.I.Act does not obliterate the manner of compounding under Section 320 Cr.P.C but it only over-rides Section 320(9) of the Cr.P.C in so far as the offence under Section 147 of the N.I.Act is concerned.

14. With reference to Section 4(2) of the Cr.P.C, the Supreme Court in *J.K.Industies (Supra)*, has explained that for compounding under the

N.I.Act, the scheme contemplated under Section 320 Cr.P.C cannot be followed “in the strict sense” and such interpretation cannot and does not mean that the fundamental provisions of compounding under Section 320 of Cr.P.C stands obliterated by “a side-wind”, as it were. Compounding, thus under Section 147 of the N.I.Act, has to be in accord with the main principle of compounding, viz. the requirement of consent of the person aggrieved.

15. The respondent, has agreed to and has consented for the compounding of the offence. The petitioner has agreed to pay an amount which is higher than the amount which has been directed to be paid by compensation. Thus, there could be no doubt that the amount, which has been directed to be paid, includes the litigation expenses and the cost incurred by the parties.

16. What has necessitated such discussion in the order is the fact that the petitioner has not surrendered before the jail authorities and has preferred the present revision petition. It was only during the pendency of the present writ petition that a settlement was arrived at between him and the respondent.

17. It has been submitted that there is no requirement under the Delhi High Court Rules or under the Code of Criminal Procedure of surrendering before the jail authorities before preferring a revision under Section 397 & 401 Cr.P.C against two concurrent judgments.

18. It has been submitted on behalf of the petitioner that since the petitioner was ill, he took the leave of the Court to surrender before the jail authorities pursuant to the Appellate Court judgment upholding his conviction by the Trial Court. Before the petitioner

could surrender, the settlement between the parties came into existence.

19. Taking into the account the totality of circumstances, where the respondent's grievance has been totally redressed as also taking into account the fact that much more than the compensation has been directed to be paid, has already been paid by the petitioner to the respondent, this Court is inclined to quash the judgments and orders by which the petitioner has been convicted and sentenced.

20. Considering the fact that the dispute now stands completely settled, there being independent provision for compounding of offence under Section 147 of the Act, and the primary object underlying Section 138 N.I. Act, 1881, the judgments assailed in the present revision petition are set aside and the petitioner is acquitted of the charges levelled against him.

21. The revision petition and the applications are hereby allowed and disposed of in terms of above.

CrI.M.(BAIL) 7591/2015

1. In view of the aforesaid order, no order is required to be passed in the instant application.

2. Dismissed as infructuous.

Dasti.

ASHUTOSH KUMAR, J

OCTOBER 07, 2015

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