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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.Rev.P. 603/2015 & Crl.M.A.13753/2015**

Date of decision: 22.09.2015

DHARMENDRA KUMAR SHARMA Petitioner
Through Mr.Rajan Chaudhary, Adv.

versus

STATE & ANR Respondents
Through Ms.Rajni Gupta, APP for the
State.
Mr.Vikas Sharma, Adv. for R2.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. The petitioner has invoked the revisional jurisdiction of this Court for challenging the judgment and order of conviction dated 23.03.2015/26.03.2015 passed by the learned Metropolitan Magistrate whereby the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') and has been sentenced to undergo SI for a period of six months and pay a compensation of the amount of Rs.2.25 lacs to the respondents. In default of payment of compensation, the petitioner has been directed to undergo further imprisonment for three months.

2. The petitioner is also aggrieved by the judgment and order passed by the Appellate Court namely ASJ, Rohini Courts, Delhi,

whereby the appeal preferred by the petitioner was dismissed and the conviction and sentence awarded by the Trial Court was upheld and affirmed.

3. Without taking this Court to the merits of the case, at the outset, it has been stated by the petitioner that he is ready to compound the case with the complainant. In fact, the petitioner has come prepared with a draft of Rs.1.25 lacs to be given to the respondent.

4. It has been submitted that as part of the compensation amount namely Rs.2.25 lacs which was awarded, Rs.1 lac has already been deposited before the Trial Court. The petitioner has also paid to the complainant (respondent) an amount of Rs.50,000/- as litigation expenses.

5. Learned counsel for the respondents does not have any objection to such a prayer.

6. Section 147 of the NI 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. The petitioner, as has been stated earlier has paid Rs.50,000/- to the respondent towards litigation expenses and is ready to pay the entire compensation amount.

14. What has necessitated such discussion in the order is the fact that the petitioner, pursuant to his being convicted and sentenced, has not surrendered before the jail authorities and has preferred the present revision petition on the strength of the settlement with the respondent.

15. It has been submitted on behalf of the petitioner that there is no requirement under the Delhi High Court Rules or under the Cr.P.C of

surrendering before the jail authorities before preferring a revision under Section 397 & 401 Cr.P.C against two concurrent judgments.

16. Taking into the account the totality of circumstances, where the respondent also is interested in getting his money back, this Court is inclined to quash the judgments and orders by which the petitioner has been convicted and sentenced.

17. Mr.Rajan Chaudhary, learned counsel for the petitioner, hands over a draft of Rs.1.25 lacs drawn in the name of the respondent which is accepted by Mr.Vikas Sharma, learned advocate appearing for respondent no.2.

18. Considering the fact that the dispute now stands 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.

19. Petition stands allowed and disposed of accordingly.

CrI.M.A.13752/2015 & 13754/2015

1. In view of the aforesaid order, all such applications are dismissed as having become infructuous.

ASHUTOSH KUMAR, J

SEPTEMBER 22, 2015/ab