

\$~40

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV. P. 654/2015**

Date of decision: 16.10.2015

BIJENDER KUMAR Petitioner
Through: Mr.Pankaj Kumar, Advocate.

versus

VIJAY KUMAR GUPTA Respondent
Through: Mr.K.K.Sharma, Advocate for
the complainant.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

Crl.M.A No15186/2015

Exemption granted subject to all just exceptions.

Application stands disposed of.

CRL.REV. P. 654/2015

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 18.02.2015/07.03.2015 whereby the learned Magistrate has convicted the petitioner under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') and has sentenced him to undergo simple imprisonment for one year and to pay a compensation of Rs.18,000/- under Section 357(3) of the Code of Criminal Procedure and in default

of payment of fine, to suffer further Simple Imprisonment for a period of six months; as also the judgment and order passed in appeal dated 01.10.2015 passed by the Special Judge/CBI-02, (P.C.Act), North-West District, Rohini Courts whereby the judgment of conviction by the Trial Court has been upheld and the sentence has been reduced from one year Simple Imprisonment to simple imprisonment for a period of 15 days and to pay compensation amount of Rs.18,000/- and in default of payment of the same, Simple Imprisonment for 7 days.

3. After the conviction of the petitioner, an agreement was entered into between the petitioner and respondent on 05.10.2015 wherein the petitioner has agreed to pay a sum of Rs.3,50,000/- out of the total award amount of Rs.3,59,000/- to the respondent on the condition that he would cooperate with the petitioner in securing acquittal of the petitioner. The aforesaid amount has been agreed to be towards full and final settlement of the claims of the respondent. The agreement further indicates that in cases where the petitioner has been acquitted and where the respondent has preferred an appeal against the acquittal, the same shall be withdrawn.

4. It would be necessary to refer to the prosecution case for deciding the aforesaid revision petition.

5. The petitioner is said to have taken a friendly loan of Rs.3,45,000/- from the respondent on 15.01.2006 at the rate of 18% per annum interest for the purposes of marriage of his daughter with a promise to return the loan amount within two years. Several post dated cheques were issued by the petitioner towards his liability for repayment of loan. When the loan amount was not repaid on time, a

request was made to the petitioner to pay up the loan but to no avail. The respondent is said to have presented one cheque bearing No.525356 dated 22.12.2007 for a sum of Rs.12,000/-, drawn on Central Bank of India, Ghonda, Mauj Pur, Delhi in his bank which was returned as dishonoured with the remark “insufficient funds” on 09.01.2008. After observing the formalities required under Section 138 of the Negotiable Instruments Act, a complaint was lodged in which the petitioner was summoned, tried and punished. The complainant, during the trial submitted that a total loan of Rs.3,45,000/- was taken by the petitioner on the pretext of marriage of his daughter. 11 cheques were issued at the time of taking of loan for the purposes of repayment of said loan in instalments and out of said 11 cheques, 9 cheques of different denominations were dishonoured.

6. The petitioner has denied the aforesaid assertion of the respondent and has submitted before both the Courts below that he had business relations with the son of the respondent and not with the respondent himself. The son of the respondent was the super stockist of Amulya Biscuits whereas the petitioner was the owner of JMD marketing and the cheques in question were given by the petitioner as security cheques for supplying biscuits to the company of the petitioner. The cheques used to be returned by the son of the respondent on cash payment but some of the cheques were not returned despite payment.

7. In the 313 statement, the petitioner has stated that another loan as asserted by the respondent was taken by him and the cheques were only by way of security for taking supply of Amulya Biscuits. The

petitioner has denied any liability towards the respondent and has asserted that the son of the respondent has misused the cheques in question.

8. The Trial Court, taking note of the presumption under Section 118A and Section 139 of the Negotiable Instruments Act held the petitioner guilty and convicted him under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and to pay a compensation of Rs.18,000/- under Section 357(3) of the Code of Criminal Procedure and in default of payment of fine, to suffer further simple imprisonment for a period of six months. On appeal, the conviction was maintained but the sentence was reduced from one year Simple Imprisonment to Simple Imprisonment for a period of 15 days and to pay compensation amount of Rs.18,000/- and in default of payment of the same, Simple Imprisonment for 7 days.

9. Both the Courts below held that the cheques relate to the account of the petitioner who does not dispute his signature on the said cheques, and therefore, the initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised in favour of the complainant respondent.

10. The present revision petition has been filed on the strength of the settlement of dispute between the petitioner and the respondent.

11. It has been stated that the petitioner and the respondent have settled their dispute of their own free will and the petitioner has agreed to pay a total amount of Rs.3,50,000/- towards full and final settlement of all his claims.

12. Learned counsel for the respondent has testified to the above assertion of the petitioner and submits that the respondent has accepted the compounding proposal put forward by the petitioner.

13. 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.”

14. 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.

15. 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.

16. 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.

17. 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.***

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

19. 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.

20. 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 the 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.

21. It has been submitted on behalf of the petitioner and which assertion has been accepted and affirmed by the respondent that the entire agreed amount has been paid and no dispute now exists between the petitioner and the respondent.

22. Taking into account the totality of circumstances, where the respondents grievance has been totally redressed as also taking into account the fact that the settlement has been arrived at between the parties of their own free will and volition and not because of any pressure or coercion and the terms of settlement having been fulfilled, this Court is inclined to quash the judgments and orders by which the petitioner has been convicted and sentenced.

23. 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.

24. The revision petition is hereby allowed and disposed of in terms of the above.

Crl.M.(BAIL) 7947/2015

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 16, 2015

k