IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(128) **CRM-M-29268-2016**
Decided on: August 24, 2016.

Anil Kumar Hooda

.... Petitioner

Versus

Grand Filaments Pvt. Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Bhavesh Kumar Sharma, Advocate, for the petitioner.

M.M.S. BEDI, J (ORAL)

The petitioner was proceeded under Section 138 of the Negotiable Instruments Act but he admitted his liability on 17.09.2015 as a result of which the trial Court passed the following order:

> *"Accused stated that after admitting his liability, he has compromised with the complainant for an amount of Rs.9,00,000/- and handed over Rs.80,000 in cash and three post dated cheques bearing no.99 dt. 19.09.2015 for Rs.2,50,000/- & Cheque bearing no.100 dt. 03.10.2015 for Rs.2,50,000/- & cheque bearing no.101 dt. 15.10.2015 for Rs.3,20,000/- to the complainant and he further stated that the above said cheques will be cleared on due date on their presentation and if the said cheques are not encashed then his statement be treated as his confession. Complainant also suffered a statement that he has received Rs.80,000/- in cash and three post dated cheques from the accused and he does not want to pursue the present complaint with liberty to revive the proceedings, if any of the cheques handed over by accused gets dishounoured.*

> *Heard. In view of the statement of both the parties, the present complaint is hereby dismissed as withdrawn with liberty to complainant to reopen the case if any cheques given by the accused gets dishonoured. Both the parties are directed to abide by the terms of compromise. Statement of both the parties are hereby made part and parcel of this order.*
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> *At this stage, an application for releasing the RC of surety moved on behalf of surety. Heard. Since the complaint has been disposed off. Therefore, the original RC is ordered to be returned to the surety against a proper receipt with identification after retaining the photocopy of the same. File be consigned to the record room, after due compliance."*

Pursuant to the above said order, three cheques were handed over to the complainant.

Learned counsel for the petitioner submits that three cheques were issued, out of said cheques, one cheque has been cleared and part of the liability qua second cheque has already been given to the complainant whereas third cheque bearing Rs.3,20,000/- has been dishonoured. It has been argued by learned counsel for the petitioner that the trial Court has got no jurisdiction to revive the proceedings in abovesaid circumstances.

I have heard learned counsel for the petitioner.

It is specifically mentioned in the order dated 17.09.2015 that the complaint was dismissed as withdrawn with liberty to the complainant to reopen the case if any of the cheques given by the accused, gets dishonoured.

Since the complaint was got disposed of on the basis of compromise which compromise later on proved to be farce, the complaint having been got dismissed by playing a fraud on the Court as such the Court has jurisdiction to revive the complaint and the bar of Section 362 Cr.P.C will not be available.

Learned counsel has relied upon judgment of Delhi High Court delivered on 19.12.2003 in ***Venkatesh Dutt Vs. M/s Shoes East Limited, 2004 (2) R.C.R. (Criminal) 24*** wherein it has been observed in para 11 as follows:

> *" Proceedings u/s 138 of the Act are penal proceedings and are independent of civil remedy of suit for recovery and therefore cannot be allowed to be converted into a civil suit. Since the offence under Section 138 of the Negotiable Instruments Act is of compoundable nature parties may decide to compound the offence u/s 138 of the Act by way of agreement. Once the complainant agrees to accept the cheques towards the liability of the accused during the pendency of the complaint, it amounts to compounding the offence resulting in acquittal as he has with open eyes entered into the agreement and accepted the cheques. Any stipulation like clause 8 in the agreement has no legal value being against the very provision of Section 138 of the Act which makes the drawer liable for penal proceedings in respect of every such cheque which is dishonoured but does not encompass the original cheque in lieu of which several cheques are issued and accepted. Every such cheque, if dishonoured, shall make the drawer liable for penal proceedings as envisaged u/s 138 of the N.I. Act."*

I have considered the said judgment. The said judgment had been rendered in the year 2003 whereas in subsequent judgment the compounding has been permitted in proceedings under the Negotiable Instruments Act. For relevant law in this context reference can be made to the judgment of Apex Court in ***Damodar S. Prabhu Vs. Sayed Babalal H. 2010 (2) RCR (Criminal) 851*** and further guidelines laid down by the Apex Court in ***Indian Bank Association Vs. Union of India, 2014 (3) Apex Court Judgment,7***.

In view of the observations of the Apex Court, the judgment of Delhi High Court is not applicable in the present case.

The petition is dismissed without prejudice to the right of the petitioner to offer an additional amount as per the guidelines mentioned in the judgment in ***Damodar S. Prabhu's case (supra)*** and honour the offer made by him at the time of compromise and seek quashing of the proceedings in accordance with law.

(M.M.S. BEDI)
JUDGE

August 24, 2016
harsha

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No