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

+ CRL.REV.P. 176/2016

RITESH KAPOOR

..... Petitioner

Through Mr.Manoj K.Srivastava & Mr.Ram
Nath, Advs.

versus

HAKIMUDDIN KHAN

..... Respondent

Through Mr.Girish Khanna, Adv.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **18.05.2016**

By way of the present revision petition filed under Section 397 read with Section 482 Cr.P.C., the petitioner seeks to challenge the judgment/order of conviction and sentence dated 26.11.2014 and 02.09.2015 respectively passed by learned Metropolitan Magistrate, against which the petitioner also preferred criminal appeal before the Sessions Court and in consequence thereto, the Sessions Court dismissed the appeal vide order dated 19.01.2016, upholding the judgment and order on sentence passed by learned Metropolitan Magistrate.

In nutshell, the brief facts of the case are that the petitioner approached the respondent for a friendly loan of Rs.4,00,000/- from the respondent. The complainant gave Rs.4,00,000/- to the petitioner on 21.05.2008. To discharge his liability, the petitioner issued a

cheque dated 09.09.2008 for a sum of Rs.4,00,000/- in favour of the complainant/respondent. The cheque in question was returned dishonoured on its presentation with the remarks “insufficient funds”. Respondent sent a notice but the petitioner failed to comply with the terms of the notice. Accordingly, criminal complaint under Section 138 of Negotiable Instruments Act, 1881 was filed. Notice under Section 251 of Cr. P.C. was issued to the petitioner. Trial commenced, evidence was led and ultimately the trial of the case concluded in conviction of the petitioner. The petitioner also challenged the judgment and order on sentence before the Sessions Court which was also dismissed vide judgment dated 19.01.2016. Hence, the petitioner has preferred the present revision petition.

During the course of arguments, learned counsel for the petitioner has submitted that both the parties have entered into settlement and the petitioner has paid the fine of Rs.3,26,000/- to the complainant/respondent and that the complainant/respondent has agreed to the compounding of the offence. Learned counsel for the petitioner prayed for compounding the offence for which the petitioner has been convicted as it is a compoundable offence and since the matter has been amicably settled between the parties and the complainant has also agreed to compound the offence against the petitioner.

Memorandum of Settlement/Settlement Deed dated 11.05.2016 has been placed on record which shows that the respondent has already settled the matter with the petitioner and received his dues and

he has no objection if the Complaint Case filed by him under Section 138 of the Negotiable Instruments Act, 1881 be quashed and the offence punishable under Section 138 of Negotiable Instruments Act, 1881, is compounded.

I have heard learned counsel for the parties and have also gone through the impugned judgments and orders passed by learned Metropolitan Magistrate as well as learned Additional Sessions Judge.

After considering the submissions advanced by both the sides, this Court observes that the petitioner has been convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881, which is a compoundable offence. This Court also observes that a settlement has been arrived at between the petitioner and respondent wherein both the parties have settled their disputes and the respondent has agreed to cooperate with the petitioner for compounding of the offence.

For compounding the offence under Section 138 of Negotiable Instruments Act, 1881, the Hon'ble Supreme Court in ***Damodar X. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663***, has framed the guidelines, which read as under:

“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 the 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.”*

This Court has also perused the order sheet dated 03.05.2016, wherein it was submitted by the learned counsel for the petitioner that the parties have entered into compromise and sought time deposit the litigation expenses. Copy of demand draft has been produced in the Court which shows that compounding fees of Rs.60,000/-has been deposited by the petitioner in the name of the Registrar General of this Court.

In view of the facts and circumstances; the fact that the parties to the dispute have settled their disputes by entering into settlement;

the fact that the petitioner has also deposited 15% of the cheque amount with the Registrar General of this Court, and apart from the aforesaid, the offence punishable under Section 138 of Negotiable Instruments Act, 1881 is a compoundable offence, this Court finds no impediment in compounding the offence under which the petitioner has been convicted and sentenced. Resultantly, the offence under Section 138 of Negotiable Instruments Act, 1881 under which the petitioner has been convicted and sentenced is compounded. Consequently, the judgment of conviction and order on sentence dated 26.11.2014 and 02.09.2015 respectively and the order of the appellate Court dated 19.01.2016 are hereby set aside and the petitioner is acquitted for the offence under Section 138 of the Negotiable Instrument Act, 1881.

The petitioner is behind the bar. The Jail Superintendent is directed to release the petitioner forthwith, if not required in any other case.

The petition is disposed of in the aforesaid terms.

P.S.TEJI, J

MAY 18, 2016
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