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

\+ CRL.REV.P. 190/2016

SANJEEV KUMAR ..... Petitioner

Through: Mr.Abhilash Arora, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR ..... Respondent

Through: Mr.Izhar Ahmad, APP.
Mr.Surender Nagpal and Mr.Rakesh Katiyal, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

O R D E R

% 24.05.2016

By way of the present revision petition filed under Section 397/401 of Cr.P.C.read with Section 482 Cr.P.C., the petitioner seeks to challenge the judgment/ order of conviction and sentence dated 02.06.2015 and 03.06.2015 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 23.02.2016, upholding the judgment and order on sentence passed by learned Metropolitan Magistrate. The petitioner was awarded sentence of simple imprisonment for one year and directed to pay compensation of Rs.4,50,000/- to the complainant. In default of payment of compensation, the petitioner was to further undergo simple imprisonment for six months. The learned Additional Sessions Judge vide judgment dated 23.02.2016 maintained the conviction opining that the sentence awarded by the Trial Court was neither excessive nor unreasonable and thus the same did not require any interference from the Court and thus upheld the impugned order on the point of sentence.

In nutshell, the brief facts of the case are that the respondent No.2 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner-herein alleging that he knew the appellant for the last 5-6 years and he had good relations with him. It was alleged that the petitioner was running a garment shop in the name and style of M/s Mateshwar Garments. It was further alleged that in March, 2008, the petitioner approached the respondent No.2 for financial help to the tune of Rs.5 lakhs to meet his business commitments and requested for Rs.1 lakh immediately. It was alleged that on the request of the petitioner and the fact that the respondent No.2 had good relations with the appellant, he had given a loan of Rs.80,000/- vide cheque bearing No.584084 dated April 05, 2008 drawn on ICICI Bank Ltd, Delhi and same was encashed by the petitioner. It was further alleged that in April, 2008, respondent No.2 had given a further loan of Rs.2.20 lacs in cash. In this way, respondent No.2 had given a loan of Rs.3 lacs to the petitioner. It was alleged that at the time of taking loan, petitioner assured the respondent No.2 that he would repay the same within 3-6 months or as soon as possible, but thereafter, he failed to repay the loan amount. However, after consistent persuasions, petitioner gave a cheque bearing No. 567801 dated July 25, 2010 (Ex.CW1/1) in the sum of Rs.3 lacs drawn on Bank of Baroda, Maurya Enclave in discharge of his above liability. However, on presentation the said cheque returned unpaid with remarks 'account closed' vide memo dated July 31, 2010 (Ex.CW1/2). Thereafter, respondent No.2 had sent a legal notice dated August 23, 2010 (Ex.CW1/3) through registered post and UPC. But despite serving the legal notice, petitioner failed to make the payment. Thus, respondent No.2 filed the criminal complaint against the petitioner. Vide order dated 22.11.2012, a notice under Section 251 Cr. P.C was served upon the petitioner wherein petitioner took a plea that he had taken business loan from the respondent No.2/complainant and at the time of taking the loan, the aforesaid cheque (Ex.CW1/1) was given as a security. Later on, he repaid the entire amount to the respondent No.2/complainant, but respondent No.2/complainant misused the cheque which was given blank towards security and further took the plea that he did not have any liability towards the complainant and further stated that he had not received any legal notice.

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 23.02.2016. Hence, the petitioner has preferred the present revision petition.

During the course of proceedings before this Court, at the request of the parties, the matter was referred to Delhi High Court

Mediation and Conciliation Centre where both the parties are stated to have amicably settled their disputes by entering into a settlement dated 09.05.2016. The petitioner is stated to have paid the amount as per the settlement to the respondent No.2 and is also stated to have deposited the compounding fee with the Registrar General of this Court. Learned counsel for the petitioner thus prays 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.

Statement of the complainant has been recorded separately in which he has stated that he has 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 is 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 no.2 wherein both the parties have settled their disputes and the respondent no.2 has cooperated 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."*

Today, the receipt has been produced in the Court which shows that compounding fees of Rs.45,000/- has been deposited by the petitioner by way of demand draft in the name of the Registrar General of this Court.

In view of the facts and circumstances; the fact that the parties have settled their disputes by entering into settlement; the fact that the petitioner has also deposited 15% of the compensation 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 02.06.2015 and 03.06.2015 respectively and the order of the appellate Court dated 23.02.2016 are hereby set aside and the petitioner is acquitted for the offence under Section 138 of the Negotiable Instruments 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.

The date already fixed i.e. 11.07.2016 stands cancelled.

All the pending applications also accordingly stand disposed of.

P.S.TEJI, J

MAY 24, 2016
dm

CRL.REV.P. 190/2016

STATEMENT OF Mr. ARUN KUMAR, S/O SH. OM PRAKASH, R/O: 23, GROUND FLOOR, GUJRANWALA TOWN, DELHI.

On S.A.

I am the respondent No.2/complainant in the present matter. I have already settled the matter with the petitioner before the Delhi High Court Mediation and Conciliation Centre and received my dues. I have no objection if the Complaint Case filed by me is quashed and the offence punishable under Section 138 of Negotiable Instruments Act, 1881, is compounded.

RO & AC

P.S.TEJI, J

MAY 24, 2016
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