

\$~118

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 257/2016, CrI.M.B. 680/2016, CrI.M.A. 6791/2016
SUSHIL KUMAR Petitioner

Through Dr.Balram Singh, Adv.

versus

BARUMAL JAIN Respondent
Through Mr.Pardeep Bali, Adv. with
respondent in person.

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

ORDER
% **27.04.2016**

1. By way of the present revision petition filed under Section 397/401 of Cr.P.C., the petitioner seeks to challenge the order of conviction dated 18.03.2015 passed by learned Metropolitan Magistrate, against which the petitioner also preferred criminal appeal before the Sessions Court, Rohini Court, Delhi and in consequence thereto, the Sessions Court dismissed the appeal vide order dated 20.02.2016, upholding the judgment and order on sentence passed by learned Metropolitan Magistrate. However, the sentence was modified to the extent of awarding simple imprisonment for four months to the petitioner and to pay a compensation of Rs.2,75,000/- to the respondent and in default to further undergo simple imprisonment for two months.

2. In nutshell, the brief facts of the case are that the petitioner took

a friendly loan of Rs.6,65,000/- in cash in parts from April to May 2011 from the respondent. Later on, a settlement was arrived at to the effect that the petitioner would pay the loan amount in six instalments and thus he issued six post dated cheques. The cheques in question are for a sum of Rs.1,00,000/- & Rs.1,65,000/- which were dishonoured on 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 20.02.2016. Hence, the petitioner has preferred the present revision petition.

3. During the course of arguments, learned counsel for the petitioner has submitted that both the parties have entered into settlement and the petitioner made a payment of Rs.1,00,000/- to the respondent and that the respondent compounded the offence. Learned counsel for the petitioner further contended that the offence for which the petitioner has been convicted 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, therefore, learned counsel for the petitioner prayed for compounding of the offence.

4. Statement of the respondent has been recorded separately in which he has stated that he has already settled the matter with the petitioner and received his dues and he has no objection if the Complaint Case No.565/1/2012 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.

5. 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.

6. 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.

7. 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:

- i. *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.*
- j. *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.*
- k. *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.*
- l. *Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.”*

8. This Court has also perused the order sheet dated 07.04.2016, wherein it was submitted by learned counsel for the petitioner that the petitioner has entered into a compromise with the respondent and sought time for filing the compounding fee. Today, the receipt has been produced in the Court which shows that compounding fees of Rs.41,250/-has been deposited by the petitioner by way of DD in the name of the Registrar General, Delhi High Court.

9. 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 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 conviction order dated 18.03.2015 and the order of the appellate Court dated 20.02.2016 are hereby set aside and the petitioner is acquitted for the offence under Section 138 of the Negotiable Instrument Act, 1881.

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

11. The petition is disposed of in the aforesaid terms.

12. Applications Crl.M.B. 680/2016 and Crl.M.A. 6791/2016 are also disposed of.

P.S.TEJI, J

APRIL 27, 2016
dd

CRL.REV.P. 257/2016

STATEMENT OF MR. BARUMAL JAIN SON OF LATE MR.
DHANI RAM, RESIDENT OF BP-18, PITAMPURA, DELHI-
110034. On S.A.

I am the respondent in the present matter. I have already settled the matter with the petitioner and received my dues. I have no objection if the Complaint Case No.565/1/2012 filed by me 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.

RO & AC

P.S.TEJI, J

APRIL 27, 2016
dd