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

\+ CRL.REV.P. 366/2016, Crl.M.B. 1005/2016, Crl.M.A. 8615-8616/2016

M/S LLOYED INTERNATIONAL ..... Petitioner

Through Dr.Amit George, Adv.

versus

M/S SSIPL RETAIL LIMITED AND ANR ..... Respondent

Through Mr.Vishal Ranja, Adv. with Mr.Parag Mohan Agrawal, AR of the R-1.
Mr.Izhar Ahmad, APP for the State.

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

**<u>O R D E R</u>**

**% 24.05.2016**

By way of the present revision petition filed under Section 397/401 of Cr.P.C., the petitioner seeks to challenge the judgment/ order of conviction and sentence dated 03.06.2015 and 04.06.2015 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 02.05.2016, upholding the judgment and order on sentence passed by learned Metropolitan Magistrate. The petitioner no.2 was awarded sentence of simple imprisonment for one year and directed to pay compensation of Rs.7,20,000/- to the complainant. In default of payment of compensation, the petitioner no.2 shall further undergo simple imprisonment for six months. The learned Additional

Sessions Judge vide judgment dated 02.05.2016 maintained the conviction, however modified the sentence only to the extent of setting aside the six months' imprisonment for non-payment of compensation.

In nutshell, the brief facts of the case are that the respondent had filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 against the petitioners-herein. It was alleged in the complaint that the petitioners approached the respondent-company to purchase the footwear of levis brand for onward sale. A Memorandum of Understanding dated 24.02.2010 was entered into between the parties. The respondent company supplied the goods worth Rs.12,54,297.93 to the petitioner company. Despite several demands, the petitioner company failed to clear the outstanding payments. In discharge of their liability, the petitioner issued a cheque dated 21.10.2010 for a sum of Rs.5,00,000/- in favour of the complainant/respondent company. The cheque in question was returned dishonoured on its presentation with the remarks "funds insufficient". Respondent company sent a notice but the petitioner failed to comply with the terms of the notice. Accordingly, complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 was filed. Notice under Section 251 of Cr. P.C. was framed against the petitioners. Trial commenced, evidence was led and ultimately the trial of the case concluded in conviction of the petitioners. The petitioners also challenged the judgment and order on sentence before the Sessions Court which was also dismissed vide judgment dated 02.05.2016. Hence, the petitioners have preferred the present revision petition.

During the course of arguments, learned counsel for the petitioners have submitted that both the parties have entered into settlement and the petitioners have paid a sum of Rs.Six Lakhs and that the complainant/respondent company compounded the offence. Learned counsel for the petitioners prayed for compounding the offence for which the petitioner no.2 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 petitioners.

Statement of Mr.Parag Mohan Agrawal, Authorized Representative of respondent no.1 company has been recorded separately in which he has stated that the respondent no.1 company has already settled the matter with the petitioners and received its dues and he has no objection if the Complaint Case filed by 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 no.2 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 petitioners and respondent no.1 wherein both the parties have settled their disputes and the respondent no.1 has agreed to cooperate with the petitioners 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.75,000/- has been deposited by the petitioners 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 to the dispute have settled their disputes by entering into settlement; the fact that the petitioners have 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 no.2 has been convicted and sentenced. Resultantly, the offence under Section 138 of Negotiable Instruments Act, 1881 under which the petitioner no.2 has been convicted and sentenced is compounded. Consequently, the judgment of conviction and order on sentence dated 03.06.2015 and 04.06.2015 respectively and the order of the appellate Court dated 02.05.2016 are hereby set aside and the petitioner no.2 is acquitted for the offence under Section 138 of the Negotiable Instruments Act, 1881.

The petitioner no.2 is behind the bar. The Jail Superintendent is directed to release the petitioner no.2 forthwith, if not required in any other case.

The petition is disposed of in the aforesaid terms.

The date already fixed i.e. 30.05.2016 stands cancelled.

Applications Crl.M.B. 1005/2016, Crl.M.A. No.8615/2016 and 8616/2016 are also disposed of.

**P.S.TEJI, J**

**MAY 24, 2016**
**dd**

CRL.REV.P. 366/2016

STATEMENT OF MR.PARAG MOHAN AGRAWAL, SON OF MR.ANOOP KUMAR AGRAWAL, RESIDENT OF HARDEV BAZAR, DHANAURA, DISTRICT AMROHA, UTTAR PRADESH-244231. On S.A.

I am Authorized Representative of respondent no.1 in the present matter. The respondent no.1 company has already settled the matter with the petitioners and received its dues. I have no objection if the Complaint Case filed by respondent no.1 under Sections 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**

**MAY 24, 2016**
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