

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

+ CRL.M.C. 2251/2016 & Crl.M.A. Nos.9461-9462/2016

Date of Decision: July 08th, 2016

THE ATLAS ELECTRIC INDUSTRIES PVT LTD

& ORS

..... Petitioners

Through Mr.Pawanjit S.Bindra, Adv.

versus

STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondents

Through Mr.Kamal Kumar Ghai, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") read with Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 19.04.2016 passed by the learned Additional Sessions Judge-03, West, Tis Hazari, Delhi based on the settlement recorded between the parties and issuance of directions to hear the appeal on merits.

2. The factual matrix, in brief, is that the respondent no.2-R.B. Singh had filed a complaint under Sections 148/141/142 of the Negotiable Instruments Act, 1881 against the petitioners-herein alleging therein that the cheques issued by the petitioners-herein got dishonoured when the same were presented for encashment.

The respondent no.2/complainant adduced evidence in support of his case. The learned Metropolitan Magistrate vide judgment dated 18.08.2015 convicted the petitioners for the offence under Section 138 of the N.I. Act. Vide order on sentence dated 26.08.2015, petitioner nos.2 and 3 were awarded simple imprisonment for six months. They were also directed to pay a sum of Rs.25,00,000/- as compensation to the complainant within two months. In default of payment of compensation, they would further undergo simple imprisonment for three months.

3. Against the judgment of conviction, the petitioners preferred a criminal appeal. The Appellate Court vide judgment dated 19.04.2016, acquitted the petitioners under Section 138 of the N.I. Act on the basis of compromise and compounding of the offence.

4. Feeling aggrieved by the passing of judgment dated 19.04.2016, instant petition has been preferred by the petitioners.

5. The grounds taken in support of the appeal and the arguments advanced by the counsel for the petitioner are that the Appellate Court suspended the sentence subject to the petitioners depositing Rs.5 lacs in the Trial Court which was deposited on 10.11.2015. On 03.10.2011, entire factory of the petitioners got down burnt and they suffered a huge loss. An application under Section 391/386 Cr.P.C. was filed by the petitioners before the Appellate Court for bringing on record additional documents. It is further submitted that the original bills produced by the complainant would show that the same were forged and the respondent no.2/complainant was liable for perjury. Arguments on

the said application were heard and the matter was fixed for orders on 16.03.2016 and then the matter was adjourned to 04.04.2016 for clarification and order. No clarification was taken on the said date and the matter was adjourned to 19.04.2016. On 19.04.2016, the Appellate Court directed the counsel for the petitioners to call both the petitioners in the Court. When they appeared in the Court, the Court directed the police officials to take the petitioner nos.2 and 3 in custody stating that the appeal was dismissed. When it was brought to the notice of the Court that the matter was fixed for order on the application, the Court below suggested that the petitioners to compound the offence and pay the complainant. It was further argued that as such, they were constrained to file an application for compounding and sign an Undertaking that they would pay Rs.30 lacs to the complainant. It was further submitted that the undertaking was signed by the complainant under force, coercion and duress.

6. The main contention of the petitioners is that the settlement arrived at before the Appellate Court was under force and coercion as the petitioners were not aware of what was happening in the Appellate Court. It is also contended by the petitioners that the undertaking was not given out of free will of the petitioners.

7. Perusal of record shows that the petitioners were convicted for the offence under Section 138 of the N.I. Act by the Trial Court vide judgment dated 18.08.2015 and order on sentence was passed on 26.08.2015. The petitioners had preferred an appeal and during the pendency of the appeal, an application for compounding of the

offence was moved on behalf of the petitioners and the complainant. It was mentioned in the application that the petitioners would pay Rs.30 lacs to the complainant in total towards full and final settlement between the parties. It was further mentioned that Rs.5 lacs were already deposited in the Court and the remaining sum of Rs.25 lacs would be paid in seven equal installments. An Undertaking was also given by the appellants in support of the settlement arrived at between the parties. Even the statements of the parties were recorded before the Appellate Court regarding the settlement arrived at and also regarding compounding of the offence.

8. In view of the settlement arrived at between the parties and the statements made by the parties before the Court, the Appellate Court as per Section 147 of the Negotiable Instruments Act, 1881, allowed the compounding of the offence and set aside the judgment of conviction and order on sentence passed by the Trial Court. It is also apparent from the record that out of the agreed seven installments, one installment was paid by the petitioners to the complainant/respondent no.2-herein. It appears that subsequent to the making the payment of first installment, the petitioners have preferred the instant petition challenging the order passed by the Appellate Court. The record nowhere reveals that the petitioners were under any pressure or coercion to arrive at the settlement or to make the statement before the Court below, as alleged. The settlement arrived, moving of application for compounding of the offence and the recording of the statements

before the Court below, was done out of free will of the petitioners and in the presence of their counsel. Upon already availing the benefit of compounding the offence and getting the judgment of conviction and order on sentence set aside once, the petitioners cannot re-agitate the same issue which has been settled by them out of their own free will.

9. In view of the above facts and circumstances, this Court is of the considered opinion that no relief can be granted to the petitioners in the instant petition under Section 482 Cr.P.C.

10. Consequently, the present petition and applications are hereby dismissed.

JULY 08, 2016
dd

(P.S.TEJI)
JUDGE

