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

Date of hearing and Order : 26th April 2016

\+ CRL.M.C. 1733/2015

GAURAV

..... Petitioner

Through: Mr. Anurag Jain, Advocate

versus

INDIAN BANK

..... Respondent

Through: Mr. Vinay Kumar, Advocate with Mr. M. Prabhakar Reddy, AGM, Indian Bank.

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

O R D E R

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P.S. TEJI, J. (Oral)

1. By this petition filed under Section 482 of Cr. P.C., the petitioner seeks to challenge the order of conviction dated 31.01.2015 and order on sentence dated 21.02.2015, passed by learned Metropolitan Magistrate, thereby sentencing him to undergo simple imprisonment for a period of three months and to pay compensation of Rs.5,50,000 to the complainant and in default of payment of compensation, the petitioner was also ordered to undergo further imprisonment of one month. Against the said orders of conviction and sentence, the petitioner had preferred revision petition being CR No.11/15 before the learned Additional Sessions Judge (Special Fast

Track Court) Dwarka Courts, New Delhi which was dismissed vide order dated 22.04.2015, upholding the judgment and order on sentence passed by learned Metropolitan Magistrate.

2. In nutshell, the brief facts of the case are that the respondent - bank had filed a complaint under Section 138 of Negotiable Instruments Act, 1881 against the petitioner alleging that the petitioner had issued the cheque No.294410 dated 13.04.2011 in the sum of Rs.3,90,000/- in the name of the bank towards repayment of loan taken by him from the bank on 13.10.2010 vide a loan agreement of even date. Since the aforesaid cheque was dishonoured by the banker of the petitioner for the reason 'funds insufficient' vide return Advice dated 23.04.2011, the bank served a legal demand notice dated 10.05.2011 upon the petitioner, which did not evoke any response from the petitioner and hence the complaint was filed.

3. Trial commenced, evidence on behalf of both the sides were recorded and ultimately the trial concluded and the petitioner was found guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and thus he was sentenced to undergo simple imprisonment of three months and the petitioner was directed to pay compensation of Rs.5,50,000/- and in default of payment of compensation, the petitioner was directed to undergo further imprisonment for one month.

4. Being aggrieved by the judgment of conviction and order on sentence, the petitioner preferred a revision petition before the learned

Additional Sessions Judge, which was dismissed while upholding the orders passed by learned Metropolitan Magistrate. Hence, the petitioner has preferred the present revision petition.

5. Perusal of the record shows that on 27.04.2015, when the present petition first came up for hearing before this Court, the counsel for the petitioner stated that the petitioner shall be depositing cheque amount of Rs.3,90,000/- and he will also pay the interest on the said amount from the date of 23.04.2011 till the date of payment. Accordingly, the impugned order dated 22.04.2015 was stayed.

6. On 11.12.2015, counsel appearing on behalf of both the parties stated that the matter is likely to be settled between the parties and therefore requested for referring the same to the Mediation and Conciliation Centre, High Court of Delhi. Accordingly, the parties were referred to Mediation, where a compromise was arrived at between the parties and a settlement agreement dated 25.01.2016 was executed between them. When the matter came up before this Court for hearing on 28.03.2016, the petitioner sought permission to deposit the compounding charges @ 15% of the cheque amount in question in compliance of judgment of Hon'ble Supreme Court in the case of ***Damodar X. Prabhu vs. Sayed Babalal H.,*** **(2010) 5 SCC 663.**

7. As per office report, the petitioner has deposited a demand draft of Rs.58,500/- vide DD No.180309 dated 19.04.2016 in favour of Registrar General, High Court of Delhi.

8. Mr. Anurag Jain, learned counsel for the petitioner contended that the parties have entered into the settlement agreement and have settled all their disputes and the petitioner has also deposited the amount of Rs.58,500/- as compounding charges. Apart from the aforesaid, the offence for which the petitioner has been convicted is a compoundable offence, therefore the sentence awarded by the learned Metropolitan Magistrate be compounded against the petitioner.

9. Mr. M. Prabhakara Reddy, Assistant general manager of the respondent - Bank has caused his appearance and made his statement on oath, on behalf of the Bank to the effect that the bank has settled the matter with the petitioner and the bank has also received its dues, therefore, the bank has no objection if the offence for which the petitioner is sentenced, is compounded. The statement of Mr. M. Prabhakara Reddy was recorded in Court separately.

10. Mr. Izhar Ahmed, Additional Public Prosecutor appears on behalf of the State and submits that the orders passed by learned Metropolitan Magistrate as well as by learned Additional Session Judge are well reasoned order and do not call for any interference from this Court.

11. 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 by learned Additional Sessions Judge.

12. After considering the submissions advanced by both the sides and upon perusal of the impugned orders, evidence on record and the decisions cited, 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 Agreement has been arrived at between the petitioner and the Complainant Bank, wherein both the parties have settled their disputes and the Complainant/respondent- Bank has no objection is compounding of the offence with which the petitioner is charged. Statement of Mr. M. Prabhakar Reddy, AGM, Indian Bank, is also recorded to this effect separately.

13. For compounding the offence under Section 138 of Negotiable Instruments Act, 1881, the Hon'ble Supreme Court in ***Damodar X. Prabhu vs. 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."

14. In view of the facts and circumstances; the fact that the parties to the dispute have settled their disputes by entering into Settlement Agreement dated 25.01.2016 before the Delhi High Court Mediation and Conciliation Centre; 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.

15. Accordingly, the offence under Section 138 of Negotiable Instruments Act, 1881 under which the petitioner has been convicted and sentenced is compounded. Resultantly, the compounding of an offence shall have the effect of an acquittal of the petitioner/accused

with whom the offence has been compounded.

16. The petitioner is on bail. His bail bond is cancelled and the sureties stand discharged.

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

P.S.TEJI, J

APRIL 26, 2016
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