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

\+ CRL.REV.P. 523/2015

HARI KISHAN THROUGH VINIT SARWAN (PAROKAR)

..... Petitioner

Through: Mr.Ranjan Kumar, Adv.

versus

GOVT OF NCT OF DELHI & ORS ..... Respondents

Through: Mr.M.P.Singh, APP.
Mr.Dalip Mishra, Adv. for R-2.

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

ORDER

% 26.05.2016

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 06.11.2013 and 12.11.2013 respectively passed by learned Metropolitan Magistrate vide which the petitioner had been sentenced to undergo SI for one year and to pay fine of Rs.3,00,000/- and in default of payment of fine, to further undergo SI for six months. The petitioner preferred criminal appeal before the Sessions Court which was dismissed by the Sessions Court vide order dated 13.10.2014 upholding the sentence awarded by the Trial Court and directing the petitioner to pay the arrears of compensation as on that date to the tune of Rs.75,000/-, in default to undergo SI for one month.

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 had friendly relations with the petitioner for a long period of time. The petitioner approached the respondent No.2/complainant for a loan of Rs. 3 lakhs and the said request was duly accepted by the respondent No.2 and a friendly loan of Rs.3 lakhs was given by the respondent No.2/complainant to the petitioner which was to be repaid within a short period of time. It has been alleged that the accused issued a post dated cheque of Rs.3 lakhs bearing No.530757 dated 29.02.2008 drawn on Delhi State Cooperative Bank Ltd towards repayment of loan amount to the complainant. However, the said cheque was returned dishonoured on being presented for encashment by the complainant vide returning memo dated 01.03.2008 with remarks 'insufficient funds' The respondent No.2/complainant thereafter contacted the petitioner/accused on telephone for the repayment of the loan amount but the latter refused to make the payment of the loan amount or the cheque amount abovesaid. The respondent No.2/complainant thereafter got issued a legal notice dated 19.03.2008 through registered post and UPC to the petitioner/accused but despite the expiry of the stipulated period in this regard, the petitioner failed to make the payment of the cheque amount in question and hence the complaint in question was filed on 02.05.2008 for the offence under Section 138 Negotiable Instruments Act, 1881.

The petitioner/accused was summoned by the court vide order dated 19.11.2008 and notice of accusation for the offence punishable under Section 138 Negotiable Instruments Act, 1881 was put to the accused vide order dated 08.02.2013 to which he pleaded not guilty and claimed trial.

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 13.10.2014. Thereafter vide order dated 12.08.2015, he was ordered to be taken into custody and sent to jail for undergoing sentence of simple imprisonment of one year and for the sentence for a period of one month in default of payment of compensation of Rs.75,000/- as compensation amount was not paid by him. Hence, the petitioner has preferred the present revision petition.

During the course of proceedings before this Court, vide order dated 22.04.2016, it was submitted that the matter has been settled between the parties and the learned counsel for the petitioner sought time to deposit the compounding fee. The petitioner is 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.

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 agreed to the 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 06.11.2013 and 12.11.2013 respectively and the order of the appellate Court dated 13.10.2014 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.

P.S.TEJI, J

MAY 26, 2016/dm