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

Date of hearing and Order : 3rd May 2016

\+ CRL.REV.P. 817/2015

SUSHIL KUMAR PROPRIETOR OF M/S AAR ESS & CO.

..... Petitioner

Through: Mr. Ashok Tobria and Mr. Pradeep Pathak, Advocates

versus

THE STATE & ANR

..... Respondent

Through: Mr. Rajat Katyal, Additional Public Prosecutor for the State
Mr. Gourav Gupta, Advocate for respondent No. 2

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

ORDER

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P.S. TEJI, J. (Oral)

1. By this petition filed under Section 397 and 401 read with Section 482 of Cr. P.C., the petitioner seeks to challenge the order of conviction dated 23.01.2015 and order on sentence dated 24.02.2015, passed by learned Metropolitan Magistrate, Dwarka Courts, Delhi, thereby convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act, 1881 and sentencing him to undergo simple imprisonment for a period of five months and to pay fine of Rs.12 lacs as compensation to the complainant and in default of payment of compensation, the petitioner was also ordered to undergo

further imprisonment of three month. Against the said orders of conviction and sentence, the petitioner had preferred criminal appeal being Appeal No.27/2015 before the learned Special Judge (PC Act), CBI-05, Patiala House Courts, New Delhi, which was dismissed vide order dated 30.11.2015, upholding the judgment and order on sentence passed by learned Metropolitan Magistrate.

2. The case of the complainant is that the complainant is a company incorporated and registered under the Companies Act, 1956 and is engaged in the business of manufacturing and marketing of Ceramic Wall and Floor Tiles. The accused approached the company for supply of wall and floor ceramic tiles of various sizes, colours and varieties for his project at HSIDC Manesar, Gurgaon, Haryana and placed a confirmed purchase order dated 26.06.2002 for Rs. 11,30,880/-. Along with the above Purchase Order, accused issued cheque bearing no. 041253 dated 26.06.2002 for a sum of Rs. 11,30,880/- drawn on Union Bank of India, Jharsa Road, Gurgaon towards purchase consideration of goods and requested the complainant to present the same after supply of goods. The complainant supplied the goods as per specification as to quantity and quality to the accused at his site at HSIDC Office Complex, Manesar, Gurgaon, Haryana. Complainant presented the above cheque on 27.08.2002 but the same was returned unpaid. The complainant then informed the accused about the dishnour, who issued a fresh cheque no. 437714 dated 20.09.2002 for Rs. 11,30,880/- drawn on Punjab National Bank, Kailash Colony, New Delhi. According to the

complainant, the aforesaid second cheque when presented for realisation, was also returned unpaid. The complainant again informed the accused about the return of the cheque. Then after repeated requests of the complainant, the accused paid a sum of Rs. 4,30,000/- in two installments (Rs. 2,00,000/- + Rs. 2,30,000/-) by way of Draft to the complainant and issued cheque in question bearing no. 046272 dated 15.04.2003 for a sum of Rs. 7,00,880/- drawn on Union Bank of India, Jharsa Road, Gurgaon in favour of the complainant towards the balance purchase consideration. According to the complainant, the aforesaid cheque when presented for realisation, was received back dishonoured vide bank return memo dated 17.04.2003 with the remarks "Payment Stopped By The Drawer". Consequentially, a legal notice dated 28.04.2003 was served by the complainant through its counsel upon the accused vide Registered A.D and through U.P.C dated 29.04.2003 calling upon the accused to make the payment towards cheque amount in question within 15 days of receipt of notice. According to the complainant, the said notice was duly served upon the accused and accused also sent a reply dated 14.05.2003 but no payment against the above dishonoured cheque had been made by the accused within the requisite period. Hence the present complaint.

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 for a period of five months and to pay

fine of Rs.12 lacs as compensation to the complainant and in default of payment of compensation, the petitioner was also ordered to undergo further imprisonment of three month.

4. Being aggrieved by the judgment of conviction and order on sentence, the petitioner preferred an appeal being Criminal Appeal No. 27/2015 before the learned Special Judge (PC Act), CBI-05, Patiala House Courts, New Delhi, which was dismissed vide order dated 30.11.2015, upholding the judgment and order on sentence passed by learned Metropolitan Magistrate.

5. Perusal of the order sheet dated 01.04.2016 reveals that respondent No. 2 submitted before this court that the parties have entered into a compromise and the matter may be disposed of as compounded. Accordingly, the petitioner sought time for depositing the compounding charges before the Registrar General of this Court.

6. The petitioner has filed the application under Section 147 of the Negotiable Instruments Act, 1881 read with Section 4892 of Cr.P.C. for compounding of the offence. It is contended that the petitioner has entered into an agreement/MOU with respondent No. 2/complainant and settled down the entire matter in total amount of Rs.12,90,000/- and in this regard, a compromise deed dated 11.03.2016 has been entered into between the parties. The petitioner has prayed for compounding the offence and for quashing the sentence imposed upon him.

7. During the course of hearing of the present case, learned counsel for the petitioner has submitted that the petitioner has deposited 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.**

8. As per office report, the petitioner has deposited a demand draft of Rs.1,05,132/- vide DD No.094790 dated 05.04.2016 in favour of Registrar General, High Court of Delhi.

9. Mr. Ashok Tobria, learned counsel for the petitioner contended that the parties have entered into the Compromise Deed/ MOU, and have settled all their disputes and the petitioner has also deposited the amount of Rs. 1,05,132/- as compounding charges. Apart from the aforesaid, it is contended that the offence for which the petitioner has been convicted is a compoundable offence, therefore it is prayed that the sentence awarded by the learned Metropolitan Magistrate be compounded against the petitioner.

10. Mr. Parveen Kumar Nim, Deputy Manager (Legal) of the respondent – Company has caused his appearance and affirmed the fact that the complainant company has entered into Compromise Deed/MOU with the petitioner to the effect that the respondent company has settled the matter with the petitioner and the respondent company has also received its dues, therefore, the complainant has no objection if the offence for which the petitioner is sentenced, is

compounded.

11. Mr. Rajat Katyal, 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.

12. 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.

13. 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 Compromise Deed/MOU has been arrived at between the petitioner and the Complainant company, wherein both the parties have settled their disputes and the Complainant/respondent-company has no objection to the compounding of the offence with which the petitioner is charged and sentenced.

14. 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."

15. In view of the facts and circumstances; the fact that the parties to the dispute have settled their disputes by entering into Compromise Deed/ MOU 11.03.2016; 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.

16. 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.

17. A copy of this order be sent to Trial Court for information.

18. The bail bond furnished by the petitioner is cancelled and the sureties stand discharged.

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

Dasti.

P.S.TEJI, J

MAY 03, 2016
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