

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

Date of hearing and Order : 22nd April 2016

+ CRL.REV.P. 832/2015
SANJAY CHANDELIYA

..... Petitioner

Through: Mr. Dalip Anand, Advocate

versus

STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondent

Through: Mr. Izhar Ahmed, Additional Public
Prosecutor for the State

+ CRL.REV.P. 835/2015
SANJAY CHANDELIYA

..... Petitioner

Through: Mr. Dalip Anand, Advocate

versus

STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondent

Through: Mr. Izhar Ahmed, Additional Public
Prosecutor for the State

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

ORDER

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P.S. TEJI, J. (Oral)

1. By the aforesaid two separate revision petitions filed under Section 397/401 read with Section 482 of Cr. P.C., the petitioner seeks to challenge the order of conviction dated 19.09.2015 and 24.09.2015

respectively, passed by learned Metropolitan Magistrate, against which the petitioner also preferred two separate appeals being Appeal Nos. 42 and 43 of 2015 before the learned Additional Sessions Judge-02/FTC, New Delhi District, Patiala House Courts, Delhi and in consequence thereto, the learned Additional Sessions Judge had dismissed the appeals vide order dated 16.12.2015, upholding the judgment and order on sentence passed by learned Metropolitan Magistrate.

2. Since both the revision petitions arise out of a common order and judgment passed by learned Additional Sessions Judge as well as learned Metropolitan Magistrate, therefore both the petitions are heard together and are being disposed of together.

3. In nutshell, the brief facts of the case are that the petitioner had asked friendly loan of Rs.5 lacs in the month of August 2010 but the respondent No.2/Complainant somehow could arrange only Rs.3,80,000/- and paid the same through five separate cheques. The petitioner assured the respondent No. 2 that he would repay the same within a period of six months. In the month of March 2013, the petitioner called the respondent No. 2 and handed over six post dated cheques in lieu of repayment of his loan amount. All the cheques were dishonoured with the remarks 'insufficient funds'. Respondent No. 2 sent notice and the petitioner failed to comply with the terms of the notice. Accordingly, two separate criminal complaints under Section 138 of Negotiable Instruments Act, 1881 were filed. Notice under Section 251 of Cr. P.C. was issued to the petitioner. Trial commenced,

evidence were lead by both the sides 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 learned Additional Sessions Judge, by way of two separate appeals, which were also dismissed by a common order dated 16.12.2015.

4. While considering the facts and circumstances of the case, the learned Metropolitan Magistrate has passed the impugned order of conviction and order on sentence, against which the petitioner preferred an appeal before the learned Additional Sessions Judge, which has also been dismissed while upholding the orders passed by learned Metropolitan Magistrate. Hence, the petitioner has preferred the present revision petition.

5. At the outset, Mr. Dalip Anand, learned counsel for the petitioner does not challenge the orders passed by the Trial Court as well as Appellate Court on merit, however it is contended that even at the appellate stage, the petitioner was ready to pay the entire amount of compensation which was saddled on him by the Trial Court and for that purpose the petitioner got prepared two demand drafts. But since there was no representation on behalf of the complainant before the appellate Court, therefore the said submission of the petitioner could not be accepted and resultantly the appellate Court upheld the findings and sentence of the Trial Court. It is further contended that the petitioner has entered into the memorandum of understanding dated 15.02.2016 with the complainant/respondent No. 2 and as per the

settlement, the complainant has agreed to compound the offence against the petitioner, in lieu of the payment of the settlement amount.

6. Learned counsel for the petitioner further contended that the offence for which the petitioner has been convicted is a compoundable offence and since the matter has amicably been settled between the parties and the complainant has also agreed to compound the offence against the petitioner, therefore, learned counsel for the petitioner prayed for compounding of the offence.

7. Mr. Izhar Ahmed, Additional Public Prosecutor appears on behalf of the State and submits that there is no illegality or infirmity in the order passed by learned Metropolitan Magistrate as well as learned Additional Sessions Judge and the order/judgment passed by learned Additional Sessions Judge does not call for any interference from this Court.

8. 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.

9. 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 Memorandum of Understanding dated 15.02.2016

has been arrived at between the petitioner and Complainant/respondent No. 2, wherein both the parties have settled their disputes and the Complainant/respondent No. 2 has agreed to cooperate with the petitioner for compounding of the offence.

10. 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.”

11. This Court also has perused the order sheet dated 04.04.2016, wherein it was submitted by learned counsel for the petitioner that he has already compounded the matter with the respondent No. 2 and also sought permission of the Court to deposit the compounding charges @ 15% of the cheque amount. He was directed to deposit the same with the Registrar General of this Court within 15 days.

12. As per the office report, the petitioner has deposited the compounding fee of Rs.57,000/- by way of two DDs in the name of the Registrar General, Delhi High Court.

13. In view of the fact and circumstances and the fact that the parties to the dispute have settled their disputes by entering into Memorandum of Understanding dated 15.02.2016 and 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.

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

15. The aforesaid petitions are disposed of in the aforesaid terms.

P.S.TEJI, J

APRIL 22, 2016

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