**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CRM-A-1852-MA-2017 (O&M)**
**Date of decision: 01.12.2017**

**Ruchika Sawhney**

**... Appellant**

**Vs.**

**M/s Landmark Apartment Private Limited and others**

**... Respondents**

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Mr. Tanmoy Gupta, Advocate
for the appellant.

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**ARVIND SINGH SANGWAN, J. (ORAL)**

Prayer in this appeal is to set aside the judgment dated 08.05.2017 passed by the trial Court vide which the proceedings in a complaint filed by the appellant-complainant under Section 138 of the Negotiable Instruments Act ('N.I. Act' for short) were compounded.

Brief facts of the case are that the appellant has filed a complaint under Section 138 of N.I. Act with the allegations that the respondents-accused issued a cheque of Rs.2 lacs, in discharge of their liabilities and when the cheque was returned by the bank for the reasons "Account Blocked", the appellant issued a legal notice and thereafter, filed the present complaint. After the trial Court summoned the respondents-accused, they filed an application (Annexure A-2) for compounding the offence as the accused have submitted a demand draft for Rs.2 lacs in favour of the appellant-complainant. The said application was contested by the appellant by filing reply (Annexure A-3). The trial Court, vide impugned order dated 08.05.2017, passed the following order: -

> *"Perusal of case file also reveals that the present application for compounding is moved before this Court at a subsequent stage. The compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible in case titled as KM. Ibrahim Vs. K.P. Mohsmmrf & St., 2009 (14) SCALE 262, wherein it has been noted (at page 11): -*
>
> > *11. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provision of the Code relating to compounding of offences....*
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> *The proceedings u/s 138 of the Negotiable Instruments Act are semi criminal in nature. For the interest of justice, compensatory remedy should be given priority over the punitive aspect. In case* ***Damodar S. Prabhu Vs. Sayed Baba Lal H., Criminal Appeal Nos.964-966 of 2010,*** *the following guidelines have been issued: -*
>
> *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 a 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.*

*The present matter falls within the preview of 1(b) of guidelines. However, learned counsel for the complainant contended that the complainant is not agreed to compound the offence. However, I am of the considered view that receiving the Demand Draft against the cheque amount shows her concern with the payment only. The complainant seems to be interested in* *prosecuting the accused in vindictive mind. She can claim damages by availing other legal remedies under Civil law, if the complainant feels harass on account of litigation it is open for her to claim damages and compensation in accordance with law. Reliance is placed on case titled as **Vijay Verma Vs. Bellow Jewells Pvt. Ltd. and others, CRM-A-73-MA-2014 (O&M).** Hence, keeping in view the circumstances of the case as well as maintaining the harmony between the complainant and the accused, the present matter is hereby compounded subject to condition that accused is required to pay 10% of cheque amount in District Legal Services Authority. Receipt be placed on record on the next date of hearing and thereafter, file will be consigned to record room being compounded."*

Counsel for the appellant submits that the trial Court was not justified in compounding the offence under Section 138 of N.I. Act, as the same was done without following the proper procedure. Counsel for the appellant has relied upon **JIK Industries Limited and others Vs. Amarlal V. Jumani and another, 2012 (1) RCR (Crl.) 822,** wherein the Hon'ble Supreme Court has held as under: -

*"In our country also when the Criminal Procedure Code, 1861 was enacted it was silent about the compounding of offence. Subsequently, when the next Code of 1872 was introduced it mentioned about compounding in Section 188 by providing the mode of compounding. However, it did not contain any provision declaring what offences were compoundable. The decision as to*

*what offences were compoundable was governed by reference to the exception to Section 214 of the Indian Penal Code. The subsequent Code of 1898 provided Section 345 indicating the offences which were compoundable but the said Section was only made applicable to compounding of offences defined and permissible under Indian Penal code. The present Code, which repealed the 1898 Code, contains Section 320 containing comprehensive provisions for compounding. A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a Code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of Section 147 in theN.I. Act, the entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence under the N.I. Act, in that case the compounding of offence under N.I. Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under N.I. Act. Therefore, Section 147 of the N.I. Act must be reasonably construed to mean that as a result of the said Section the offences under N.I. Act are made compoundable, but the main principle of such compounding, namely, the consent of the person*

> *aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of N.I. Act.*
>
> *For the reasons aforesaid, this Court is unable to accept the contentions of the learned counsel for the appellant(s) that as a result of sanction of a scheme under Section 391 of the Companies Act there is an automatic compounding of offences under Section 138 of the N.I. Act even without the consent of the complainant."*

Counsel for the appellant has thus submitted that the compounding, without consent of the complainant, cannot be ordered by the trial Court. He has also relied upon **M/s Meters and Instruments Private Limited and anr. Vs. Kanchan Mehta, 2017 (4) RCR (Crl.) 476,** wherein the Hon'ble Supreme Court has as under: -

> *"From the above discussion following aspects emerge:*
>
> *i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and*

*interest is paid and if there is no reason to proceed with the punitive aspect.*

*ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.*

***iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.***

*iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.*

> *v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances."*

After hearing learned counsel for the appellant, I find no merit in the present appeal. Admittedly, the appellant accepted the demand draft of Rs.2 lacs against the cheque amount and the accused persons have been further directed to deposit 10% of the cheque amount in District Legal Services Authority, therefore, the implied consent of the appellant is apparent on record. Even otherwise, the Hon'ble Supreme Court in **M/s Meters and Instruments Private Limited**'s case (supra) has held that though for the compounding, consent of both the parties is required but in the absence of consent of one party, the Court in the interest of justice on being satisfied that the complainant has been duly compensated, in its discretion, can close the proceedings and discharge the accused.

A perusal of the impugned order passed by the trial Court shows that the same has been passed in the light of the judgment passed by the Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H., 2010 (2) RCR (Crl.) 851.** The only argument raised by counsel for the appellant that the appellant has not given consent for compounding the offence, was duly noticed by the trial Court, as the appellant-complainant has accepted the demand draft of Rs.2 lacs as against the cheque amount of Rs.2 lacs, which proves the consent of the appellant.

For the reasons stated above, I find no illegality in the impugned order passed by the trial Court.

Accordingly, the application under Section 378 (4) of Cr.P.C. as well as the present appeal are dismissed.

**[ ARVIND SINGH SANGWAN ]**
**JUDGE**

01.12.2017
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No