IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.11343 of 2016(O&M)
Date of Decision: 18.03.2017

Gurcharan Singh ......Petitioner

Versus

State of Punjab and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Shilesh Gupta, Addl, AG, Punjab.

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<u>RAJ MOHAN SINGH, J.(ORAL)</u>

[1]. Petitioner was an accused in criminal complaint filed under Section 138 of Negotiable Instruments Act in which he was convicted and sentenced to undergo rigorous imprisonment for 10 months along with compensation to the tune of half of the cheque amount vide judgment and order dated 24.03.2015. Petitioner remained unsuccessful in the appeal before the lower Appellate Court which was dismissed on 08.07.2015. Petitioner did not file any revision petition against the conviction and sentence.

[2]. Petitioner filed the present petition under Section 482 Cr.P.C seeking indulgence of this Court for quashing the judgment of conviction and order of sentence on the basis of compromise.

[3]. Learned counsel for the petitioner by relying upon

Cochin Hotels Co.(P) Ltd. and others Vs. Kairali Granites and others, 2006(2) RCR (Criminal) 333 and K. Subramanian Vs. R. Rajathi represented by POAP Kaliappan, 2010 (1) RCR (Criminal) 184 contended that even after finalization of judgment of conviction and order of sentence, petitioner can resort to compounding mechanism in terms of Section 147 of Negotiable Instruments Act as the offence related to dishonouring of cheque is having compensatory profile and it should be given precedence to cumulative mechanism. Offence is almost a civil wrong which has been clothed in a criminal overtone, therefore, the priority should be given to compensatory mechanism.

[4]. Learned counsel also relied upon ***Damodar S. Prabhu vs. Sayed Babalal H., AIR 2010 SC 1907, Kaushalya Devi Massand vs. Roopkishore, 2011(2) RCR (Criminal) 298*** and contended that the compromise in question would definitely go in long way to strengthen the mutual relationship between the parties and would serve as ever lasting tool in their favour. This exercise would be in consonance with the spirit of Section 147 of the Negotiable Instruments Act as endorsed in ***Damodar S. Prabhu's case (supra)***.

[5]. It is worth noticing that at the time of decision before the lower appellate Court, the petitioner was not in custody, nor

he has surrendered till date. An objection has been taken in the written statement by respondent No.1 to this effect.

[6]. In view of aforesaid, extent and scope of Sections 147 and 138 of the Negotiable Instruments Act and Section 320 Cr.P.C have to be analysed. Section 147 of the Negotiable Instruments Act begins with non obstante clause and such clause is being used for the purposes of communicating that the provision shall prevail upon other despite anything contained to the contrary. Any other law, therefore, despite in the nature of complaint under Section 138 of the Negotiable Instruments Act can be settled by way of a compromise irrespective of any other statute including the provision in terms of Section 320 Cr.P.C in particular. The scheme of Section 320 Cr.P.C deals with procedural aspects and also provides enforceable rights and obligations and also has an element of substantive legislation under a general law or procedure. The enactment in terms of Section 147 of the Negotiable Instruments Act being the special law would prevail over general law.

[7]. In ***Municipal Corporation, Indore Vs. Ratnaprabha, 1977(1) RCR (Rent) 431***, the Hon'ble Apex Court while dealing with the provision and language of non obstante clause observed in the following manner:

"As has been stated, clause (b) of Section 138 of the

Act provides that the annual value of any building shall "notwithstanding an), thing contained in any other law for the time being in force" be deemed to be the gross annual rent for which the building might reasonably at the time of the assessment be expected to be let from year to year". While, therefore, the requirement of the law is that the reasonable letting value should determine the annual value of the building, it has also been specifically provided that this would be so "notwithstanding anything contained in any other law for the time being in force". It appears to us that it would be a proper interpretation of the provisions of clause (b) of Section 138 of the Act to hold that in a case where the standard rent of a building has been fixed under Section 7 of the Madhya Pradesh Accommodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961. This view will, in our opinion, give proper effect to the non obstante clause in clause (b) with due regard to its other provision that the letting value should be "reasonable"."

[8]. The expressions general law and special law are relative terms and referred to a particular subject dealt with by respective act so that it is not possible logically to label any set

of law as being general laws or special laws. Undisputedly, the offence punishable under Section 138 of the Negotiable Instruments Act is not a subject matter which can be dealt with under the Indian Penal Code. The expression special law as defined in Section 41 of the Indian Penal Code, cannot be taken to mean only enactment which creates fresh offences not made punishable under the Indian Penal Code. The liabilities created by Sections 138, 139, 141 and 143 of the Negotiable Instruments Act are in contemplation with an offence otherwise not contemplated by Indian Penal Code. Therefore, Section 147 of the Negotiable Instruments Act would prevail over the scheme including Section 320(6) of Cr.P.C.

[9]. Now the question arises if the person after having remained unsuccessful before the Courts in hierarchy and after running away from the jurisdiction of the Court by not surrendering can avail the benefit of non obstante clause in terms of Section 147 of the Negotiable Instruments Act, even without surrender before the Court.

[10]. The Court is aware of an accepted principle that unless the Court is asked to answer a particular point, normally the Court should not venture to deal with the points which are not raised by any of the parties. In the instant case, a question has arisen that whether after availing statutory remedies and after

having remained unsuccessful therein, the petitioner can file the present petition under Section 482 Cr.P.C read with Section 147 of the Negotiable Instruments Act for quashing of the complaint on the basis of compromise without surrendering before the Court at first point of time.

[11]. The jurisdiction of the Court under Section 482 Cr.P.C read with Article 226 of the Constitution of India is unfattered. The Court is also aware that when a thing is required to be done in a particular fashion, then the same should be done in that very fashion, however, exception can be carved out in view of inherent jurisdiction of the Court so as to bring about real intention of the special statute on compensatory mechanism. In my view, a pragmatic approach should be adopted so as to curtail further litigations between the parties on this technical aspect. Parties compounding the offence under Section 138 of the Negotiable Instruments Act with the aid of Section 147 of the Negotiable Instruments Act are bound to satisfy the conscience of the Court on facts when the jurisdiction of the Court is invoked under Section 482 Cr.P.C. There is no embargo in Section 147 of the Negotiable Instruments Act and that makes the offence under Section 138 of the Negotiable Instruments Act to be distinct and different from other normal offences punishable under the Indian Penal Code.

[12]. In view of facts and circumstances of the case, factum of not surrendering by the petitioner after availing statutory remedy would not affect the right of the petitioner. The relief arising out of compensatory mechanism is based on the ratio laid down by the Apex Court in ***Damodar S. Prabhu's case (supra)***. On this aspect, case titled ***Kirpalsingh Pratapsingh Ori Vs. Balvinder Kaur Hardipsingh Lobana, 2004 CriLJ 3786 (Gujarat)*** can be relied, wherein para No.32 of the judgment reads as under:-

> *"In view of the above, the accused Salvinder Kaur Harditsingh Lobana shall not be under obligation to surrender to the jail authorities and shall be treated as acquitted on account of compounding of the offence with the complainant/person affected."*

[13]. Filing of petition on the basis of compromise even despite loosing the remedy in hierarchy is maintainable in view of observations made by Courts in ***Cochin Hotesl Co. (P) Ltd. and others case (supra)*** and ***Jaswinder Singh Vs. State of Punjab and another, 2011(7) RCR (Criminal) 2613***. On larger consideration, this Court is of the view that, the subject matter of the complaint itself has been compounded by way of amicable resolution of controversy, therefore, there should not be any impediment in smooth sailing between the parties on account of any technicality, lest it may give rise to further bad blood

between the parties.

[14]. In view of aforesaid, the present petition is allowed. Impugned judgment dated 08.07.2015 passed by Additional Sessions Judge, Patiala and judgment of conviction and order of sentence dated 24.03.2015 passed by Judicial Magistrate First Class, Patiala are hereby quashed. However, the petitioner shall abide by the conditions laid down in ***Damodar S. Prabhu's case (supra)*** in the context of depositing 15% of the cheque amount as litigation expenses before the trial Court within one month from the receipt of certified copy of the order, failing which this order will be of no consequences.

(RAJ MOHAN SINGH)
JUDGE

18.03.2017
prince

Whether Reasoned/Speaking **Yes/No**

Whether Reportable **Yes/No**