

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

Date of Decision: 30.05.2017

1. CRR No.3704 of 2016(O&M)

Atul SoodPetitioner

Versus

Cholamandlam Investment and Finance Company Limited
... Respondent

2. CRR No.3711 of 2016(O&M)

Atul SoodPetitioner

Versus

Cholamandlam Investment and Finance Company Limited
... Respondent

3. CRR No.3713 of 2016(O&M)

Atul SoodPetitioner

Versus

Cholamandlam Investment and Finance Company Limited
... Respondent

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

Present:Mr. Sandeep Wadhawan, Advocate
for the petitioner.

Ms. Puja Chopra, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(ORAL)

[1]. Vide this common order, CRR No.3704 of 2016 titled
Atul Sood Vs. Cholamandlam Investment and Finance
Company Limited, CRR No.3711 of 2016 titled Atul Sood Vs.

Cholamandlam Investment and Finance Company Limited and CRR No.3713 of 2016 titled Atul Sood Vs. Cholamandlam Investment and Finance Company Limited are being disposed of.

[2]. On 09.05.2017, following order was passed:-

“Learned counsel for the applicant/petitioner contends that vide order dated 06.10.2016, petitioner sought time to have instructions in the context of making payment to the respondent-Finance Company. Thereafter one time settlement has been arrived at between the parties on 31.03.2017 and the entire payment has been made to the respondent-Finance Company by way of demand drafts.

Learned counsel further contends that the said demand drafts in the sum of Rs.1,67,50,000/- have already been encashed by the respondent-Finance Company.

Let notice in the applications as well as in the main case be issued for the date fixed i.e. 29.05.2017.”

[3]. Against total outstanding amount of Rs.4,58,56,846/-, one time settlement was arrived at between the parties and an amount of Rs.1,67,50,000/- was settled.

[4]. In pursuance of order dated 09.05.2017, Ms. Puja Chopra, Advocate appears on behalf of the respondent-Finance Company and admits the aforesaid settlement. Demand drafts in a sum of Rs.1,67,50,000/- have already been encashed by the respondent-Finance Company and nothing is

due towards the petitioner. Petitioner was convicted and sentenced by the Courts below and the present criminal revisions have arisen against those orders.

[5]. Apparently, both the parties have amicably resolved their controversy by way of entering into one time settlement and the same has already been acted upon. Respondent-Finance Company has decided not to go ahead with the prosecution of the petitioner. Petitioner has not surrendered before filing the criminal revisions and has sought indulgence of this Court on the basis of compromise.

[6]. 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.

[7]. 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)**.

[8]. 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.

[9]. 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".

[10]. 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.

[11]. 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.

[12]. 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.

[13]. The jurisdiction of the Court under Section 482 Cr.P.C read with Article 226 of the Constitution of India is unfettered. 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.

[14]. 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.”

[15]. Filing of petition on the basis of compromise even despite losing 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.

[16]. In view of aforesaid, impugned judgments passed by Courts below are hereby set aside. Since, the amount has been settled in one time settlement, therefore, in view of observations made in **Damodar S. Prabhu's case (supra)**, deposit of 15% of the cheque amount is hereby waived off in the interest of justice.

[17]. Disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

30.05.2017

prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No