

HONOURABLE SRI JUSTICE N. BALAYOGI

I.A.No.1 OF 2018
IN/AND
CRIMINAL PETITION No. 5070 OF 2011

COMMON ORDER:

1. Criminal Petition No. 5070 of 2011 under Section 482 Cr.P.C. is filed by the Accused challenging the order dated 09.06.2011 passed in CrI.R.P.No.39 of 2008 on the file of learned I Additional Metropolitan Sessions Judge, Visakhapatnam, confirming the order dated 28.04.2008 passed in CC.No.669 of 2005 on the file of learned III Metropolitan Magistrate, Visakhapatnam.
2. This Court while admitting the Criminal Petition suspended the substantive sentence of imprisonment alone and the petitioner/accused was ordered to be released on bail on the ground that during the pendency of the trial and also pendency of the appeal, he was on bail and the said interim order is in force as on today.
3. The second respondent herein filed CC.No. 669 of 2005 against the petitioner on the file of learned III Metropolitan Magistrate, Visakhapatnam for the offences punishable under Section 138 of the Negotiable Instruments Act. The trial Court convicted the petitioner and sentenced him to suffer simple imprisonment for a period of three months and further directed him

to pay compensation of Rs.85,000/- to the second respondent. Aggrieved by the same, the petitioner preferred CrI.R.P.No. 39 of 2008 on the file of learned I Additional Metropolitan Sessions Judge, Visakhapatnam, whereby the conviction and sentenced imposed by the trial Court was confirmed by order dated 9.6.2011. Challenging the same, present criminal petition is filed.

4. Now the petitioner/accused filed I.A.No.1 of 2018 stating that the matter is settled out of Court and that in order to avoid further consequences, he paid the entire amount as demanded by the second respondent. He therefore seeks to record the compromise and compound the offence.

5. The 2nd respondent/*de facto* complainant and his counsel as well as petitioner/accused and his counsel are present.

6. Heard both sides and perused the record.

7. It is submitted by both the parties that at the intervention of the elders and well-wishers, the parties have amicably settled their disputes concerning the present crime and hence compromise may be recorded and criminal proceedings in the above crime may be quashed by compounding the offence.

8. In *JK INDUSTRIES LIMITED AND ORS. VS. AMARLAL V. JUMANI AND ANR.* (AIR 2012 SC 1079) the Apex Court held that offence under the N.I. Act, which was previously non-compoundable in view of Section 320 Sub-section 9 of the Code has now become compoundable. That does not mean that the effect of Section 147 is to obliterate all statutory provisions of Section 320 of the Code relating to the mode and manner of compounding of an offence. Section 147 will only override Section 320 (9) of the Code in so far as offence under Section 147 of N.I. Act is concerned. Further their Lordships framed some guide lines for compounding of offences under Sections 138 of the NI Act, according to which (a) an application for compounding of the offences at the first or second hearing of the case has to be made 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.

9. In terms of the aforesaid decision, as the petitioner/accused has made application for compounding the offence at this appellate stage, he has to pay 15% of cheque amount by way of costs with the Legal Services Authority. On such payment of costs, the application I.A.No.1 of 2018 shall stand allowed compounding the offence in terms of the joint memo filed by the parties herein.

10. Consequently Criminal Petition No. 5070 of 2011 shall stand allowed accordingly quashing the order dated 09.06.2011 passed in Crl.R.P.No.39 of 2008 on the file of learned I Additional Metropolitan Sessions Judge, Visakhapatnam and also the order dated 28.04.2008 passed in CC.No.669 of 2005 on the file of learned III Metropolitan Magistrate, Visakhapatnam.

11. Miscellaneous petitions pending consideration if any in the Criminal Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 28th February, 2018.
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