

S.No.210

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

Date of Decision:20.09.2018

1. CRM-M-17300 of 2017 (O&M)

**M/s Anant Tools (Unit No.II) Pvt. Ltd. and othersPetitioners
Vs.**

M/s Anant Tools Pvt. Ltd., JalandharRespondent

2. CRM-M-17352 of 2017 (O&M)

**M/s Anant Tools (Unit No.II) Pvt. Ltd. and othersPetitioners
Vs.**

Swatantar Kumar ChopraRespondent

3. CRM-M-17353 of 2017 (O&M)

**M/s Anant Tools (Unit No.II) Pvt. Ltd. and othersPetitioners
Vs.**

M/s Anant Tools Pvt. Ltd., JalandharRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. M.L. Saggar, Senior Advocate with
Mr. Abhilaksh Grover, Advocate for the
petitioners.

Mr. Vikram Chaudhri, Senior Advocate
with Ms. Ishal Goyal, Advocate for the
respondents.

Rajbir Sehrawat, J.(Oral)

This order shall dispose of three petitions i.e. CRM-M-17300 of 2017 - M/s Anant Tools (Unit No.II) Pvt. Ltd. and others Vs. Anant Tools Pvt. Ltd., Jalandhar, CRM-M-17352 of 2017 - M/s Anant Tools (Unit No.II) Pvt. Ltd. and others Vs.Swatantar Kumar Chopra and CRM-M-17353 of 2017 - M/s Anant Tools (Unit No.II) Pvt. Ltd. and others Vs. Anant Tools Pvt. Ltd., Jalandhar, involving identical facts, but involving different cheques, and thus resulting in three different complaints and three different

proceedings.

Broadly outlined, the facts of this case are that the respondent – M/s Anant Tools Pvt. Limited filed complaint against the present petitioners, which is, incidentally, having a little bit similar name, i.e. M/s Anant Tools (Unit No.II) Pvt. Limited, and its Directors. The allegations in the complaint are that earlier the complainant and the accused had common business and were initially running a joint business. However, thereafter, the business was separated by the two. As a result, the assets, rights and liabilities were divided between the parties. An amount of Rs.18,52,253/- was required to be paid by the accused No.1 to the complainant, as a result of the above said settlement, as involved in one complaint. There are other amounts also, which are involved in two other complaints. For discharge of the above said liability, the petitioners had issued cheque dated 08.01.2009 for the above said amount of Rs.18,52,253/-. For the amounts involved in other complaints, two other cheques were also issued. However, on being presented, the cheques were dishonored by the Bank. Resultantly, notices were issued to the petitioners/ accused on account of dishonor of all the three cheques, as involved in three complaints. Despite the notices, the amounts were not paid by the petitioners. This resulted into complaints being filed against the petitioners under Section 138 of Negotiable Instruments Act. The summoning orders were issued against the present petitioners in all the three complaints.

During the pendency of the above said complaints against the petitioners, they filed applications for compounding of the offences in all the three complaints. However, since the complainant had not agreed for

compounding the offences, therefore, the trial Court dismissed the applications moved by the petitioners, in all the three complaints.

Challenging that order passed by the trial Court; as well as; seeking quashing of the complaint and the summoning order, the present petitions have been filed.

Counsel for the petitioners has contended that, after the summons were issued against the present petitioners in the complaints, then they had also got lodged an FIR against the complainant. As an attempt for compromising the entire matter, the complainant had agreed for quashing of the complaints, at the stage when the complaints had filed application for seeking anticipatory bail; in the FIR case lodged by the petitioner. However, thereafter, the complainant got dishonest and the complainant tried to get out of the agreement arrived at between the parties. Hence, the petitioners moved the abovesaid applications for compounding, by attaching the drafts for the amounts of cheque involved in the complaint; with further undertaking to pay anymore reasonable amount deemed appropriate by the Court. But these applications have been dismissed by the trial Court. It is further contended by the counsel that as per the law laid down by the Hon'ble Supreme Court in **2010(5) SCC 663 – Damodar S. Prabhu v. Sayed Babalal H.** and another judgment rendered in **2017(4) RCR (Criminal) 476 – M/s Meters and Instruments Private Limited and Another v. Kanchan Mehta**, the consent of the complainant is not required for compounding the offence under Section 138 of Negotiable Instruments Act. Counsel has referred to the judgment of the Hon'ble Supreme Court in **Damodar S. Prabhu's case (supra)**, to contend that provisions of Section

320 Cr.P.C, which requires consent of complainant, have been held to be non-applicable in case of compounding of the offence under Section 138 of NI Act due to use of non-obstante clause in Section 147 of NI Act. While referring to the judgment rendered in **M/s Meters and Instruments Private Limited's case (supra)**, counsel has submitted that this judgment has specifically dealt with the issue of consent of the complainant; for the purpose of compounding; and has held that the Court can permit compounding of the offence irrespective of or in absence of the consent of the complainant; as well. Counsel for the petitioner further contends that pursuant to the earlier agreement arrived at between the parties, the petitioners had already given their consent for quashing of the FIR No.31 dated 06.02.2010 registered under Sections 420, 406, 465, 467, 468, 471, 120-B IPCat Police Station Division No.4, Jalandhar, which was lodged against the complainant. However, now the complainant has resiled from his part of the compromise. Through this modality, the complainant has tried to take the undue advantage of the Court proceedings.

On the other hand, learned counsel for the complainant/respondent has argued that; it is not disputed that the complainant had filed the three complaints prior in time. Thereafter, as a counter blast, the present petitioners had also got lodged the above said FIR against the complainant in the year 2010. At the stage of seeking anticipatory bail, the parties had arrived at a compromise on 19.03.2010. Under that compromise, the parties were to withdraw/ get quashed; all the criminal proceedings against each other. The present petitioners were to pay Rs.12 lakhs to the complainant.

In compliance of the compromise, the complainant had withdrawn the three

complaints against the present petitioners. However, the present petitioners neither paid Rs.12 lakhs to him nor got the FIR against the complainant quashed; in compliance of the compromise arrived at between the parties. This led to filing of three petitions by the present complainant; before this Court earlier, i.e. CRM-M-14420 of 2011 – Swatantar Kumar Chopra Vs. M/s Anant Tools (Unit-II) Pvt. Ltd. and others, CRM-M-20527 of 2011 – M/s Anant Tools Pvt. Ltd. Vs. M/s Anant Tools (Unit-II) Pvt. Ltd. and others, CRM-M-20528 of 2011 -M/s Anant Tools Pvt. Ltd. Vs. M/s Anant Tools (Unit-II) Pvt. Ltd. and others.

After hearing both the sides, this Court had found that the compromise between the parties had finally broken down. As a result, this Court had passed order dated 05.08.2014, separately; in those three petitions, holding that the agreement between the parties is declared to be rescinded and the parties would be at liberty to prosecute their criminal proceedings against each other. Accordingly, it is contended by counsel for the respondent, that there was no more any compromise between the parties and this Court had granted liberty to the parties to prosecute their respective cases. Hence, the earlier compromise cannot be referred to by the petitioners for any purpose, for compounding of the offences or for quashing of the complaints.

As reply to the judgments cited by counsel for the petitioners, the counsel for the respondents has submitted that the Hon'ble Supreme Court in **Damodar S. Prabhu's case (supra)**, has not been decided upon the issue involved in the present case, i.e., whether the compounding can be permitted by the Court even in absence of the consent of the complainant?

It is contended by the counsel that consent of the complainant/ injured in a criminal case is a sine qua non for compounding of the offences. While referring to the above said case of **Damodar S. Prabhu's case (supra)**, the counsel has contended that although this judgment has dealt with the Section 147 of Negotiable Instruments Act; which uses a non-obstante clause; and has considered its effect vis-a-vis Section 320 of Cr.P.C., however, this judgment has not specifically explored the applicability of Section 320 of Cr.P.C qua the consent of the complainant; in case of compounding of offence under Section 138 of NI Act. It is further contended by the counsel that this aspect was specifically considered and decided by the Hon'ble Supreme Court in **2012(1) R.C.R. (Criminal) 822, JIK Industries Limited and Others v. Amarlal V. Jumaní and Another.**

In this case, the Hon'ble Supreme Court has categorically explained that; although in the earlier judgment rendered in **Damodar S. Prabhu's case (supra)**, the question of exclusion of Section 320 Cr.P.C in cases relating to compounding of offences under Section 138 of NI Act, due to Section 147 of NI Act, has been considered, yet the applicability of Section 320 Cr.P.C. for the purpose of consent of the compounding party, has not been decided by the Court. It is contended by the counsel that the judgment in **JIK Industries Limited's case (supra)** has considered the scope of the non-obstante clause used in Section 147 of NI Act in great details; and has ultimately held that despite the earlier judgment rendered in **Damodar S. Prabhu's case (supra)**, the proceedings under Section 138 of Negotiable Instruments Act cannot be compounded; except with the consent of the complainant.

Having heard learned counsel for the parties, this Court finds that the arguments raised by the learned counsel for the petitioners are not legally sustainable. So far as the compromise between the parties, under which the petitioner can take recourse, is concerned, the same has already been held to be finally revoked by this Court, with further liberty to the respective parties; to prosecute their criminal cases against each other. Therefore, by any means, it would not have been possible for the trial Court to give effect to any kind of agreement/ compromise or consent; on the part of the complainant on its own. Hence, the only question; which the trial Court could have considered is, whether the application filed by the petitioner for compounding of the offence under Section 138 of Negotiable Instruments Act, would have been allowed even without consent of the complainant. The trial Court has rightly rejected the application for compounding moved by the petitioners; for the lack of necessary consent from the complainant. This Court does not find any illegality or infirmity in the order passed by the trial Court.

So far as judgments cited by the learned counsel for the petitioner are concerned, this Court finds substance in the argument of the learned counsel for the respondents; that the judgment of the Hon'ble Supreme Court rendered in **Damodar S. Prabhu's case (supra)** does not specifically deal with the issue of compounding of an offence under Section 138 of Negotiable Instruments Act in absence of consent of the complainant. This judgment; primarily; proceeds on the assumption that, in the facts of that particular case, there was a consent between the parties.

The dispute in that case was only regarding the stage at which the parties

can; appropriately; be permitted to compound the offence under Section 138 of Negotiable Instruments Act. Although the Hon'ble Supreme Court held that even under Section 147 of NI Act, the offence under Section 138 of Negotiable Instruments Act can be compounded at any stage, however, the Hon'ble Supreme Court laid down a graded scale of costs, to be paid by the party applying for compounding; with reference to the stage of proceedings; at which the compounding has been sought by the party. Beyond that, this judgment has no significance; so far as the question of consent of the complainant for compounding is concerned.

The above said judgment of the Supreme Court rendered in **Damodar S. Prabhu's case (supra)**, has specifically been considered by the subsequent Bench of Hon'ble Supreme Court in case of **JK Industries Limited's (supra)**. While explaining the scope of consideration in **Damodar S. Prabhu's case (supra)**, the Hon'ble Supreme Court in the case of **JK Industries Limited's (supra)**, has held that; this judgment cannot be interpreted to mean that applicability of Section 320 Cr.P.C stands altogether obliterated due to use of non-obstante clause in Section 147 of the Negotiable Instruments Act. The Court in **JK Industries Limited's case (supra)** also held that the basic ingredients of Section 320 Cr.P.C do not stand excluded merely because of uses of non-obstante clause in Section 147. It has been further held that the use of the non-obstante clause in a statute has to be considered with reference to the context in which it has been used. Accordingly, it has been held that the basic ingredient of compounding, i.e., the consent of the other side, the complainant in the present case, cannot be dispensed with while considering any application

for compounding. This proposition qua compounding has been contrasted by the Hon'ble Supreme Court, in this judgment, as against the proceedings-where the quashing of a complaint is sought by the accused. The Supreme Court has held that quashing of a complaint stands on a different footing and it can be ordered even without the consent of the complainant. However, compounding is altogether a different concept, and the same cannot be resorted to or applied by the Court; except with the consent of the complainant.

Although the counsel for the petitioners has rightly relied upon the subsequent judgment of the co-ordinate Bench of the Hon'ble Supreme Court rendered in **M/s Meters and Instruments Private Limited's case (supra)**, however, this Court finds that this judgment, though has referred to the earlier judgment of the Supreme Court rendered in **JK Industries Limited's case (supra)**, however, has neither overruled the same nor has taken a detailed discussion regarding the proposition, which was specifically decided by the Hon'ble Supreme Court in the case of **JK Industries Limited's case (supra)**. Therefore, this Court is faced with a piquant situation, where there are two judgments from two co-ordinate Benches of the Hon'ble Supreme Court on the same proposition, but are diametrically opposed to each other. However, this dilemma has also been put to peace by the Hon'ble Supreme Court in another Constitutional Bench judgment, rendered in **2017(4) RCR (Civil) 1009 – National Insurance Company Limited v. Pranay Sethi and others**. In this judgment, the Hon'ble Supreme Court has amply clarified that; in case the subsequent Bench of equal strength does not intend to follow the earlier Bench of the

same strength; then the appropriate course for the subsequent Bench is only to refer the matter to the larger Bench. It has further been clarified that in case this recourse is not adopted by the subsequent Bench, then it is the judgment first in point of time; which shall be a binding precedent on that point of law and not the subsequent judgment.

In view of this pronunciation of the law by the Constitutional Bench judgment of the Supreme Court in **Pranay Sethi's case (supra)**, this Court finds that; it has to follow the judgment rendered by the Hon'ble Supreme Court in case of **JK Industries Limited's case (supra)**, which mandated the content of the complainant for compounding of the offence under Section 138 of NI Act.

In the present case, admittedly, there is no consent for compounding on the part of the complainant, therefore, it was impermissible for the trial Court to permit compounding merely on unilateral application moved by the petitioner/ accused. Hence the trial Court has not committed any illegality by declining the application for compounding. So far as other relief prayed for in this petition, qua quashing of complaint and summoning orders, on merits of the case are concerned, this Court does not find any factual or legal basis for those reliefs. Neither any serious arguments were addressed qua that aspect.

In view of the above, finding no merit in these petitions, the same are dismissed.

September 20, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No