

CRM-M-20107-2016(O&M)

Date of decision:01.05.2018

Sukhjit Kaur

...Petitioner

Versus

Kundan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Mohd. Yousaf, Advocate
for the petitioner.

Mr. Atul Jain, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of order dated 17.05.2016 (Annexure P-5) passed by the trial Court vide which the application of the petitioner for granting permission to deposit the cheque amount for paying the same to the complainant and compounding of offence has been dismissed.

Brief facts of the case are that the respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act with the allegation that the petitioner-accused had issued a cheque for Rs.4,00,000/- on 15.01.2009 and on presentation of the same in the Bank, the same was returned with the remarks 'no debit status'. The complainant after issuing a notice to the petitioner, filed the complaint. During the pendency of this complaint, the petitioner initially filed a CRM-M-5453 of 2011, which was disposed of on 09.12.2011 by passing the following order:-

“While issuing notice of motion, this Court observed as under:-

Learned counsel for the petitioner inter alia contends that a compromise was effected between the parties on 02.08.2009 and the petitioner paid an amount of

Rs.3,40,000/- against the total amount of Rs.4,00,000/- . The said amount was received by the respondent and receipt thereof was also issued. He further submits that on the basis of false averments, complainant has been filed and the summoning order has been passed without taking into consideration receipt of the said amount.

Notice of motion for 25.04.2011.

Meanwhile, further proceedings before the trial Court are stayed.

The complainant has disputed the issue of receipt Annexure P-2. The disputed fact that whether Annexure P-2 was executed or not cannot be adjudicated by this Court. So, in these circumstances, the petition stands dismissed and matter is left open to be decided by the trial Court.

The petitioner can raise all the pleas, raised before this Court before the trial Court.

09.12.2011

*Sd/-
K.C.Puri
Judge ”*

Thereafter, the petitioner approached the trial Court, by moving an application (Annexure P-4) for compounding of offence and allowing the petitioner to deposit the cheque amount of Rs.4,00,000/-. The trial Court, vide its impugned order dated 17.05.2016, dismissed the said application on the premise that the respondent-complainant cannot be forced to compound the offences and, therefore, if one of the party do not agree for offence to be compounded, the Court cannot pass such an order. The present petition has been filed challenging the aforesaid order.

On 14.09.2016, while issuing notice of motion, the petitioner was directed to deposit an amount of Rs.5,27,000/- i.e. the cheque amount

of Rs.4,00,000/- along with interest due on the same.

Counsel for the petitioner submits that she has already deposited the said amount in the trial Court and therefore, the petition be allowed and the impugned order should be set aside as she has paid the entire amount along with interest to the complainant.

Reply on behalf of the respondent has been filed and only objection taken is that the litigation is pending for the last about eight years, therefore, the respondent is not ready to compound the offence. It is also stated that the petitioner had filed the aforesaid CRM-M-5453-2011, which was dismissed as the petitioner has wrongly stated that she has paid the amount of Rs.3,40,000/- to the respondent.

Counsel for the petitioner has argued that since the petitioner is ready to compound the offences and deposited the entire amount along with interest to the respondent-complainant, the impugned order is liable to be set aside and the offence should be compounded. Learned counsel for the petitioner further submitted that the petitioner is a lady and is a patient of breast cancer and attached her medical treatment record Annexure P-3 (colly). It is further submitted that due to poor financial and health conditions, the petitioner could not make the payment earlier.

Learned counsel for the petitioner has relied upon 2017 (4) R.C.R. (Criminal) 476, M/s Meters and Instruments Private Limited & another versus Kanchan Mehta, wherein, the Hon'ble Supreme Court has held as under :-

“18. 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.”

In reply, learned counsel for the respondent - complainant has

submitted that the complainant is not ready and willing to compound the offence as the amount, deposited by the petitioner in pursuance to the order dated 14.09.2016, is still lying deposited with the trial Court and the complainant has not withdrawn the said amount.

After hearing counsel for the parties, I find merit in the present petition. Though there is an inordinate delay on the part of the petitioner to approach the respondent for compounding the offence, however, it is apparent that in pursuance to the order dated 14.09.2016, the petitioner had deposited the entire cheque amount of Rs.4,00,000/- along with interest as on that date, i.e. total of Rs.5,27,000/- in the trial Court. Learned counsel for the respondent-complainant has not disputed this fact that the petitioner is suffering from breast cancer as per the medical record (Annexure P-3), however, has shown his unwillingness to accept the amount and compound the offence under Section 138 of the Negotiable Instruments Act.

In view of the above and in view of the judgment of Hon'ble Supreme Court in **M/s Meters and Instruments Pvt. Limited's case (Supra)**, this petition is allowed. The impugned order dated 17.05.2016 is set aside and the offence under Section 138 of the Negotiable Instruments Act is compounded and the petitioner is discharged in the complaint (Annexure P-1). It will be open for the respondent to file an appropriate application before the trial Court for withdrawal of the amount of Rs.5,27,000/-.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

01.05.2018

Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No