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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRM-M-28750 of 2013
Date of Decision: 24.01.2018.

DEVKI NANDAN TYAGI

...Petitioner

Versus

TEK RAM DAHIYA

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Vikram Singh, Advocate
for the petitioner.

Mr. S.P. Chahar, Advocate
for the respondent.

RAJ SHEKHAR ATTRI, J. (ORAL)

Learned counsel for the petitioner has placed reliance upon the judgment rendered by the Hon'ble Supreme Court in case of '**M/s Meters and Instruments Pvt. Ltd. and anr. vs. Kanchan Mehta, 2017(3) Apex Court Judgment (SC) 396**' and submits that he is ready to pay the amount mention in the complaint.

Heard.

The application filed by the petitioner for compounding the offence with a request to allow him to make the entire payment of cheque amount was declined without any cogent reason.

Hon'ble Supreme Court in M/s Meters and Instruments' case (supra) in paras No. 6 to 8 has held as under :

6. The object of introducing Section 138 and other provisions of Chapter XVII in the Act in the year 1988 was to enhance the acceptability of cheques in the settlement of liabilities. The drawer of cheque is made liable to prosecution on dishonour of cheque with safeguards to prevent harassment

of honest drawers. The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 to amend the Act was brought in, inter-alia, to simplify the procedure to deal with such matters. The amendment includes provision for service of summons by Speed Post/Courier, summary trial and making the offence compoundable.

7. This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the payee and credibility of business transactions suffers a setback **Goa Plast (P) Ltd. v. Chico Ursula D'Souza, 2004(1)R.C.R.(Criminal) 179: (2004) 2 SCC 235.** At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 amendment specifically made it compoundable **Vinay Devanna Nayak v. Ryot Sewa Sahekari Bank Ltd. 2008(1) R.C.R. (Criminal) 249: 2008 (1) R.C.R. (Civil) 249: 2007 (6) Recent Apex Judgments (R.A.J) 558 : (2008) 2 SCC 305.** The offence was also described as 'regulatory offence'. The burden of proof was on the accused in view of presumption under Section 139 and the standard of proof was of "preponderance of probabilities" **Rangappa v. Sri Mohan 2010 (3) R.C.R (Criminal) 164 : 2010 (3) Recent Apex Judgments (R.A.J.) 415 : (2010) 11 SCC 441.** The object of

the provision was described as both punitive as well as compensatory. The intention of the provision was to ensure that the complainant received the amount of cheque by way of compensator. Though proceedings under Section 138 could not be treated as civil suits for recovery, the scheme of the provision, providing for punishment with imprisonment or with fine which could extend to twice the amount of the cheque or to the both, made the intention of law clear. The complainant could be given not only the cheque amount but double the amount so as to cover interest and costs. Section 357(1)(b) of the Cr. P.C. provides for payment of compensation for the loss caused by the offence out of the fine **R. Vijayan v. Baby, 2011 (4) R.C.R. (Civil) 834 : 2011 (4) R.C.R. (Criminal) 743 : (2012) 1 SCC 260**. Where fine is not imposed, compensation can be awarded under Section 357 (3) Cr. P.C. to the person who suffered loss. Sentence in default can also be imposed. The object of the provision is not merely penal but to make the accused honour the negotiable instruments **Lafarge Aggregates & Concrete India (P) Ltd. v. Sukarsh Azad 2014 (1) R.C.R. (Criminal) 611 : 2014 91) Recent Apex Judgments (R.A.J.) 360 : (2014) 13 SCC 779**.

8. In view of the above scheme, this Court held that the accused could make an application for compounding at the first or second hearing in which case the Court ought to allow the same. If such application is made later, the accused was required to pay higher amount towards cost etc. This Court has

also laid down that even if the payment of the cheque amount, in terms of proviso (b) to Section 138 of the Act was not made, the Court could permit such payment being made immediately after receiving notice/summons of the court. The guidelines in Damodar (supra) have been held to be flexible as may be necessary in a given situation. Since the concept of compounding involves consent of the complainant, this Court held that compounding could not be permitted merely by unilateral payment, without the consent of both the parties. **Rajneesh Aggarwal v. Amit J. Bhalla, 2001(1) R.C.R. (Criminal) 605 : (2001) 1 SCC 631.**

Learned trial Court failed to appreciate the law laid down by the Supreme Court in the '**Damodar S. Prabhu v. Sayed Babalal H. 2010(2) R.C.R. (Criminal) 851** and other judgments pronounced by the Hon'ble Apex Court.

In this view of the matter, the impugned order is not sustainable. However, the trial Court is directed to dispose of the application filed by the petitioner, in view of the law laid down by the Hon'ble Supreme Court in M/s Meters and Instruments' case (supra).

Disposed off accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

January 24, 2018
Jyoti-IV