

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

(i) CRM No.M-52731 of 2018 (O&M)

Mr.Sachin Arora

...Petitioner

VERSUS

M/s Moods Hospitality Private Limited and others

...Respondents

(ii) CRM No.M-52757 of 2018 (O&M)

Mr.Dharampal Arora

...Petitioner

VERSUS

M/s Moods Hospitality Private Limited and others

...Respondents

(iii) CRM No.M-52892 of 2018 (O&M)

Ms.Anita Arora

...Petitioner

VERSUS

M/s Moods Hospitality Private Limited and others

...Respondents

Date of Decision: November 29, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Abhishek Sanghi, Advocate for
Mr.H.S.Sandhu, Advocate
for the petitioners.

INDERJIT SINGH, J.

All the above-mentioned cases are taken up together as point
for determination in all these case is the same.

Petitioners have filed these petitions under Section 482 Cr.P.C. for setting aside orders dated 20.10.2018 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which applications filed by the accused-respondents for compounding the offence under Section 138 of the Negotiable Instruments Act was allowed without the consent of complainant-petitioner etc.

I have heard learned counsel for the petitioners and have gone through the record.

The perusal of the record shows that accused-respondents filed applications for compounding of offence by stating that on 18.08.2018, they got prepared pay order of ₹6,74,892/- equal to cheques amount in question. These applications were contested by the complainant being not maintainable. The complainant-petitioner contended that at this belated stage, i.e. after passing of almost two years from filing the complaint and as per latest amendment, accused is required to deposit 20% of cheque amount.

Learned JMIC, Gurgaon, after hearing the parties, relied upon the law laid down by the Hon'ble Supreme Court in case titled ***M/s Meters and Instruments Private Ltd. & Anr. vs. Kanchan Mehta (Criminal Appeal No.1732 of 2017 decided on 5.10.2017)***, wherein, it is held as under:-

“18. i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view of 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.

19. In view of the above, we hold that where the cheque amount with interest and cost as assessed by the court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 Cr.P.C”.

The Court held that application for compounding the offence is maintainable under Section 143 of the Negotiable Instruments Act.

Keeping in view the above facts, learned Magistrate passed the impugned orders and directed the accused-respondents to pay amount of ₹7,56,023/- along with interest and costs of ₹40,000/-, totaling to ₹7,96,023 till 05.11.2018 in case relating to CRM No.M-52731. Similar orders were passed in connected cases.

I have gone through the impugned orders passed by learned Magistrate. Learned trial Court has relied upon the law laid down by the Hon'ble Supreme Court, where it has been held that cheque amount with interest and costs, if paid, by specific date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Negotiable Instruments Act read with Section 258 Cr.P.C. Learned counsel for the petitioner contended that offence cannot be compounded under Section 320 IPC, without the consent of the complainant. On this argument, I find that

rather, payment of the amount has been ordered in view of the law laid down by the Hon'ble Supreme Court, under Section 143 of the Negotiable Instruments Act read with Section 258 Cr.P.C.

In view of the above discussion, I find that the impugned orders dated 20.10.2018 passed by learned JMIC, Gurgaon, are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in all the petitions, the same are dismissed.

November 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No