

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1221-2012 (O&M)

Date of Decision: 01.03.2019

Hem Lata

.....Petitioner

Versus

Balwant Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. L.S. Bhangu, Advocate, for the petitioner.

Mr. Ishwar Lal, Advocate, for the respondent.

Harnaresh Singh Gill, J.

Challenge in the present revision petition is to the order dated 20.3.2012 passed by the learned Sub Divisional Judicial Magistrate, Rajpura, whereby an application filed by the petitioner for permitting her to pay the complainant the cheque amount and discharge the petitioner of the liability, was dismissed.

Learned trial Court after hearing the parties and going through the judgments referred to by the counsel, observed that compounding of the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act'), cannot be allowed without the consent of the complainant.

While issuing notice of motion, this Court on 25.4.2012 passed the following order:-

“Learned counsel for the petitioner, inter-alia, contends that application of the petitioner has been dismissed in view of the ratio of judgment in JK Industries Ltd. & Others Vs. Amarlal Vs. Juman and another, 2012(1) RCR

(Criminal) 822, whereas judgment in the case of Damodar S. Prabhu Vs.Sayed Babalal H., 2010(2) RCR (Criminal) 851, is applicable in the case of the petitioner as the petitioner was ready to make payment of the amount of cheque in dispute.

Notice of motion for 16.7.2012.

Meanwhile, trial Court is directed to adjourn the case beyond the date given by this Court.”

Thereafter, when the matter came up for hearing before this Court on 06.08.2012, this Court while admitting the revision petition, had stayed the proceedings before the trial Court, subject to the petitioner’s depositing the cheque amount with interest @10% within a period of two weeks before the trial Court. Subsequent thereafter, under the orders passed by this Court, present petition was ordered to be listed for hearing on 27.4.2018.

Learned counsel for the petitioner, without disputing the liability of the petitioner under Section 138 of the Act, submits that in compliance with the order dated 06.08.2012 passed by this Court, the petitioner has already deposited an amount of Rs.1,52,000/- i.e. the cheque amount along with interest @ 10%, before the learned trial Court. He has referred to the report dated 16.8.2017 submitted by the learned Sub Divisional Judicial Magistrate, Samana in this regard. It is, thus, prayed that as the cheque amount along with interest, as directed by this Hon’ble Court, stands paid, nothing survives in the present petition. It is yet further submitted that the very

object of Section 138 of the Act, stood met, with the payment of the entire due amount.

While referring to the latest judgment of the Hon'ble Apex Court in M/s Meters and Instruments Pvt. Ltd. and another Vs. Kanchan Mehta, 2017 AIR (SC) 4594, it is contended that the offence under Section 138 of the Act, can be compounded even in the absence of the consent of the complainant. In the said judgment, the Hon'ble Apex Court, while discussing its earlier judgments in Damodar S. Prabhu (supra) and JIK Industries (supra), has held that where the cheque amount is paid by the complainant, the Court is entitled to close the proceedings. The relevant extracts from the judgment would read 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 I.P.C. 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 dishonour 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.

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. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary

taking into account the fact that compensation under Section 357(3) Cr.P.C. with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.

20. In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the Bank where the accused has an account, such Bank, on being required, should furnish such e-mail ID to the payee of the cheque. In every summons, issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be assessed by the Court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant. If the accused complies with such summons and informs the Court and the complainant by e-mail, the Court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the Court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the Court to explore the possibility of settlement. It will also be open to the Court to consider the provisions of plea bargaining. Subject to this, the trial can be on day to day basis and endeavour must be to conclude it within six months. The guilty must be punished at the earliest as per law and the one who obeys the law need not be held up in proceedings for long unnecessarily.”

Moreover, vide order dated 14.07.2017, this Court asked for the report as to the compliance of the order dated 6.8.2012 passed by this Court. The report of the Judicial Magistrate, reads as under:-

“It is respectfully submitted that the undersigned has taken the charge of the Court on 12.5.2017, and perusal of the file shows that Hem Lata, petitioner, had deposited the cheque

amount alongwith interest of Rs.1,52,500/- vide CCD No. 18 dated 16.8.2012, in compliance of order dated 6.8.2012 passed in the above noted case, by the Hon'ble High Court, Chandigarh. The copy of Receipt Challan, is enclosed herewith. The petitioner deposited the amount within a period of two weeks before the trial Court.

It is further submitted that the fact of deposit of cheque amount along with interest i.e. Rs.1,52,500/- had already been in the notice of the complainant and his counsel, while passing of order dated 6.11.2012 by the trial Court, the then learned SDJM Camp Court, as under:-

“Present: Complainant with counsel.
Accused on bail with counsel.
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Today the case was fixed for defence evidence. The counsel for the accused today produced the certified copy of the order passed by Hon'ble High Court dated 6.8.2012 where the proceeding of this case, have been stayed and the amount of Rs.1,52,500/- has already been deposited by the accused as per the directions of the Hon'ble High Court. Now the present case is adjourned to 22.12.2012 for awaiting further orders of Hon'ble High Court.”

From the report, it is clear that the petitioner has complied with the interim order passed by this Court on 6.8.2012 and the same is also in the knowledge of respondent-Balwant Singh.

After hearing the learned counsel for the parties and having gone through the impugned order and further taking into consideration the judgment of the Hon'ble Apex Court in Kanchan Mehta's case (supra), I am of the considered opinion that once the petitioner has deposited the entire cheque amount along with interest @ 10% as directed by this Court vide order dated 6.8.2012, no purpose would be served by keeping the matter pending. Even though the respondent/complainant has

shown his resistance against accepting the cheque amount, yet I am of the view that the very object of the proceedings under the Act, is to secure the payment of the amount to the complainant and not to increase the arrears of the Courts, simply for the reason that the respondent/complainant does not give his consent. The object is primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, as may be found acceptable to the parties or the Court.

It may be noticed that when the impugned order was passed by the learned trial Court, the matter was at very initial stage. Even now, as would appear from the interim orders passed by this Court from time to time, it transpires that there is no head way in the proceedings. Thus, in consonance with the ruling of the Hon'ble Apex Court in Kanchan Mehta's case (supra), once the entire cheque amount stands paid, this Court is entitled to close the proceedings.

In view of the above, the present revision petition is allowed. The impugned order dated 20.3.2012 passed by the Sub Divisional Judicial Magistrate, Rajpura, is set aside and the trial Court is directed to decide the complaint as per the law laid down by the Hon'ble Supreme Court in Kanchan Mehta's case (supra), expeditiously.

(HARNARESH SINGH GILL)
JUDGE

01.03.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No