

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

131)

CRM-M-44035 of 2019 (O&M)

Date of Decision: 17.10.2019

Sapean Technologies Pvt. Ltd. and others

...Petitioner

Versus

Incinque Business Solutions Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Rana Gurtej Singh, Advocate, for the petitioners.

AMOL RATTAN SINGH, J. (Oral)

The petitioners challenge the order passed by the learned trial court, dismissing the application for compounding of the offences, such offences being punishable under the provisions of the Negotiable Instruments Act, 1881, on the ground that the complainant had “categorically stated” that the application could be allowed only with the consent of the complainant, which had not been taken.

Learned counsel for the petitioner points to the reply filed by the respondent-complainant to the aforesaid application (seeking compounding of the offences), wherein the reply to the prayer is as follows:-

“That the prayer, as prayed for by the accused persons, cannot be allowed in absence of a specific consent given by the complainant.

That the complainant provides its consent for compounding

of the offences subject to this Ld. Court taking into consideration the following aspects while granting just, adequate and reasonable compensation and interest:

a. harassment, both mental and financial, which has been faced by the complainant in chasing the accused persons in order to receive the money which was rightfully, legally and legitimately due to it;

b. hardship faced by the complainant in pursuing the litigation before this Ld. Court and the legal expenses of Rs.1,00,000/- that it has incurred on pursuing the present complaint;

c. that there is another case bearing no.NI Act case no.641 of 2017 which is pending before this Ld. Court and is fixed for 30.07.2019. The complainant has been chasing the accused persons in making the payment; however their conduct is disparaging not only towards the complainant but also towards this Ld. Court where they are playing hide and seek while filing such an application for compounding in one case and not filing any such application in the other case, which has been kept for service.

d. The loss of capital which the complainant has lost its business, as Rs.15,00,000/- cheque amount is not a meagre amount. And the case NI Act case no.641 of 2017 also involves a cheque amount of Rs.15,00,000/-.

e. loss of interest on the said amount. That an interest of 12% compounded annually must be granted to the complainant on the said amount from the date the debt became due;

f. That the loan amount was of Rs.17,00,000/- and the cheque issued was for Rs.15,00,000/-, just compensation would entail taking into consideration the loan amount and not only the cheque amount.

g. That the director of the complainant company (Mr. Gurtej Batra) has started suffering from hypertension and blood-pressure related issues due to the loss of money attributable to the accused persons. The same is affecting the business of the complainant company, let aside the medical expenses for the problem.”

He submits that since it has been stated that the court should take into consideration the aforesaid aspects while granting adequate compensation, it is not necessary that the court must award the amounts as

are given in the aforesaid clauses.

He cites a judgment of the Supreme Court in **M/s Meters and Instruments Private Limited and another v. Kanchan Mehta**, 2017 (4) RCR (CrI.) 476, from which he points to Clauses (iii) and (iv) of paragraph 18 thereof, as also to paragraph 19, which read as follows:-

“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.

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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.”

Thus, though undoubtedly in clause (iii), the initial part thereof observes to the effect that though compounding requires consent of both the parties, the latter part states that even in the absence of such consent, the Court can, in its discretion, “close the proceedings and discharge the accused”.

Similarly, what has been held in paragraph 19 is that where the cheque amount, along with interest and costs as are to be assessed by the court, is paid by a specific 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.

Section 357 (3) of the Code of Criminal Procedure has also been referred to in the aforesaid paragraphs of the judgment. Hence, at this stage, it would be appropriate to reproduce the relevant provisions of both, the Negotiable Instruments Act, 1881, as also the Code of Criminal Procedure, 1973, as follows:-

“The Negotiable Instruments Act.

Section 143-Power of Court to try cases summarily.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code

shall, as far as may be, apply to such trials: Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees: Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

[\(2\)](#) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

[\(3\)](#) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

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Section-147- **Offences to be compoundable.** —Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.”

The Code of Criminal Procedure, 1973

“Section 258-**Power to stop proceedings in certain cases.**—In any summons-case instituted otherwise than upon complaint, a Magistrate of

the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

Section 357- Order to pay compensation.—

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(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”

Thus, undoubtedly, the offences punishable under the provisions of Act of 1881 are compoundable in terms of Section 147 thereof, with it not specifically stipulated in the Section as to on whose instance it can be so compounded, but the inference obviously being, in the opinion of this court, that it would be at the instance of the complainant.

However, in terms of the ratio of the judgment in *Meters & Instruments* (supra), the Court, in its discretion, after assessing the amount to be paid by the accused to the complainant by way of principal, interest and compensation, in exercise of its jurisdiction under Section 143 of the Act of 1881, read with Sections 258 and 357 (3) of the Cr.P.C., can accordingly pass an appropriate order.

Compounding of an offence, however, in terms of Section 147

of the Act of 1881, would only be possible if the complainant agrees to such compounding, though of course if he does not agree to such compounding, the court still can exercise its jurisdiction as has been held by the Supreme Court in the aforesaid case, i.e. M/s Meters and Instruments Pvt. Ltd.

Thus, the prayer of the petitioner directing the trial court to compound the petition in terms of what it considers fair, would practically amount to invoking its jurisdiction under Section 143 of the Act of 1881, as per the ratio of the said judgment. Yet, “the technicality” of it still remains that compounding cannot be done simply on what is sought by the accused, without the consent of the complainant; and as regards jurisdiction to be exercised under Section 143, the trial court would naturally give due application of mind to that issue, and pass appropriate orders as it considers it equitable and just in the matter, of course also keeping in mind the parameters laid down by the Supreme Court in **Damodar S. Prabhu v. Sayed Babalal H.** (2010) 5 SCC 663.

in conclusion, the ratio of the judgment in **M/s Meters and Instruments Pvt. Ltd.** (supra) therefore, in the opinion of this Court, would be that where an application for compounding of the offence has been moved and the Courts comes to the conclusion that the accused can be discharged upon payment of the amount of the cheque plus adequate interest, damages etc., it would not hesitate to do so, exercising its jurisdiction under Section 143 of the Negotiable Instruments Act, 1881, read with Sections 357 (3) and 258 of the Code of Criminal Procedure.

Therefore, the respondent-complainant having laid down

certain conditions in its reply to the application filed by the petitioner (seeking such compounding), this Court cannot direct that the matter be compounded on an assessment reached by the trial court as to what is just and equitable compensation to the complainant.

If, however, that court comes to the conclusion that upon payment of the amount of the cheque as also adequate interest and compensation to the complainant, the accused can be discharged, naturally, it would exercise its discretion accordingly, in terms of the ratio of the aforesaid judgment.

With the aforesaid observations, this petition is dismissed.

17.10.2019
vcgarg/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes