223.

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-12543-2021
Date of Decision: 24.11.2021

PUNKIT RAI @ PULKIT RAI .... Petitioner

Versus

OMBIR SINGH .... Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kunal Dawar, Advocate,
for the petitioner.

Mr. Abhimanyu Singh, Advocate,
for the respondent.

<u>JAISHREE THAKUR.J</u>

This is a petition that has been filed under Section 482 Cr.P.C. seeking quashing of the order dated 01.03.2021 (Annexure P-6) passed by the learned Additional Sessions Judge, Gurugram whereby the application of the petitioner for compounding the offence under Section 147 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') filed in CRA-21-2018, titled as *Pulkit Rai Versus Ombir Singh*, has been rejected.

Vide judgment dated 13.12.2017, the petitioner was held guilty of an offence under Section 138 of the NI Act and vide separate order dated 22.12.2017, he was sentenced to simple imprisonment for one year and had been directed to pay an amount of Rs.2 lakhs i.e. cheque amount along with compensation to the tune of Rs.1,50,000/- to the complainant. The said judgment of conviction was challenged in an appeal which is pending consideration before the Additional Sessions Court at Gurugram bearing CRA-21-2018. During the pendency of the appeal, the petitioner filed an application for compounding of the offence and attached a copy of the demand draft dated 13.12.2019 for a sum of Rs.3,50,000/- i.e. the cheque amount of Rs.2 lakhs and Rs.1,50,000/- as compensation. The application was contested and the respondent did not agree for compounding of the same. Consequently, the application was dismissed by the learned Additional Sessions Judge on the ground that the respondent did not give his consent. Aggrieved against the said order, the instant petition has been filed.

Learned counsel for the petitioner herein would contend that the Additional Sessions Judge has ignored the fact that the proceedings under Section 138 of the NI Act are quasi criminal in nature and the proceedings ought to have set at rest once an application for compounding the offence has been moved. It is submitted that the petitioner was always ready and willing to pay Rs.3,50,000/- as had been held by the trial Court and, therefore, merely on account of the respondent refusing to accept the same, the impugned order declining the compounding of the offence ought not to have been passed. It is argued that in view of the law laid down by the Apex Court in ***Damodar S. Prabhu Versus Sayed Babalal H.-2010(5) SCC 663,*** the cheque amount along with 15% penalty was required to be paid for compounding of the offence, whereas in the instant case, the cheque amount is Rs.2 lakhs and the petitioner has been directed to pay an amount of Rs.1,50,000/- over and above, which amount is much more than 15% of the cheque amount. Counsel would also rely upon a judgment rendered in ***M/s Meters and Instruments Private Limited and another Versus Kanchan Mehta-2017 (4) R.C.R. (Criminal) 476*** where in para 18(iii), it has been held that 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. Similarly, in the case of ***Suba Singh Versus Nirmal Singh and another-CRR-3836-2018, decided on 20.12.2019,*** the coordinate Bench of this Court has allowed compounding of the offence under Section 138 of the NI Act by relying upon the judgment rendered in the case of ***Damodar S. Prabhu (supra)***. It is also submitted that in terms of the orders passed both by the trial Court and this Court, an amount of Rs.3,50,000/- which is the cheque amount and the compensation, already stands deposited in the Registry.

Learned counsel appearing on behalf of the respondent opposes the compounding of the offence under Section 138 of the NI Act while contending that the petitioner was a tenant of the respondent-complainant and there is electricity bill for an amount of Rs.1,16,095/- still pending against the tenant.

I have heard learned counsel for the parties and have also perused the case law, as relied upon.

What can be culled out from a reading of the judgment rendered in ***M/s Meters and Instruments Private Limited (supra)*** is that the court can compound and close proceedings if it is satisfied that the complainant has been duly compensated. In the opinion of the Court, the respondent-complainant has been duly compensated by depositing Rs.3,50,000/- in terms of the judgment already rendered. However, the compensation of Rs.1,50,000/- is further enhanced by asking the petitioner herein to make an additional payment of Rs.20,000/- to the respondent who has accepted the offer in Court (after obtaining necessary instructions).

Consequently, once the matter stands settled, the petitioner herein is directed to make additional payment of Rs.20,000/- to the complainant within a period of 14 days. Let the same be deposited in the Registry within a period of 14 days from today. The respondent is permitted to withdraw the amount of Rs.3,50,000/- already lying deposited in the Registry along with the amount of Rs.20,000/-. Accordingly, the application for compounding is allowed and the impugned order is set aside subject to the said deposit. The petitioner will stand discharged.

Petition stands allowed.

(JAISHREE THAKUR)
JUDGE

24.11.2021
sanjeev

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No