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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.465 of 2021

Shyam Sundar Das

..... Petitioner
Mr. S.R. Mulia, Advocate

-versus-

State of Odisha and another

..... Opposite Parties
Mr. M.K. Mohanty, A.S.C.
Mr. R.R. Nayak, Advocate for O.P. No.2.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

14.02.2022

Order No.

I.A. No.659 of 2021

- 04.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioner.
 3. This is an application for condonation of delay under Section 5 of the Limitation Act in filing the criminal revision. There is delay of 725 days in filing the criminal revision.
 4. Considering the grounds stated in the I.A, delay in filing the revision is condoned.

The I.A. is accordingly disposed of.

(A.K. Mohapatra)
Judge

CRLREV No.465 of 2021

- 05.
1. Pursuant to the notice issued by this Court vide order dated 21.02.2021, the complainant-Opposite Party No.2 has appeared through Mr. R.R. Nayak, Advocate and filed an affidavit dated 19.11.2022. The said affidavit is taken on record.
 2. On the consent of both sides, the matter is taken up for final disposal, although the matter is listed under the heading for fresh admission.
 3. Heard Mr. S.R. Mulia, learned counsel for the Petitioner, Mr. M.K. Mohanty, learned Additional Standing Counsel for Opposite Party No.1-State and Mr. R.R. Nayak, learned counsel for the complainant-Opposite Party No.2.
 4. The present criminal revision has been filed under Section 401 read with Section 397, Cr.P.C. by the accused-Petitioner challenging the order of conviction dated 27.08.2019 passed by the learned Sessions Judge, Balasore in Criminal Appeal No.57 of 2018 thereby confirming the judgment and order of conviction dated 30.07.2018 passed by the learned S.D.J.M., Nilgiri in I.C.C. No.465 of 2013 (New F. No.128 of 2015) thereby convicting the accused-Petitioner under Section 138 of the N.I. Act.
 5. The complaint case, in short, is that the complainant-Opposite Party No.2 instituted a complaint case against the present Petitioner for commission of offence under Section 138 of the N.I. Act. In the complaint petition, it was alleged by the complainant that he had a Steel and Aluminum utensil shop at Hat Chhak, Nilgiri and the accused-Petitioner used to take utensils from his shop partly on credit and partly

on payment. As on 17.03.2013, a sum of Rs.55,000/- was outstanding against the accused-Petitioner. On being requested by the Opposite Party No.2, the Petitioner on 05.08.2013 issued a cheque bearing No.471505 dated 05.08.2013 for Rs.55,000/- to clear off the entire outstanding dues. The said cheque was presented for encashment to the Banker by the Opposite Party No.2. However, the same was dishonoured by the Banker with the endorsement that “funds insufficient” and accordingly, intimation was sent by the Bankers to the Opposite Party No.2.

6. After the above noted cheque was dishonoured by the Banker, the Opposite Party No.2 issued a demand notice through his Advocate to the Petitioner on 21.08.2013 by Registered Post with A.D. demanding payment of the cheque amount from the Petitioner. However, said notice was returned without service with an endorsement that the “addressee absent”. Accordingly, on 22.10.2013, the Opposite Party No.2 filed the above noted complaint case under Section 138 of the N.I. Act.

7. Learned trial court after going through the evidence and materials available on record, by a judgment dated 30.07.2018 in the above noted ICC Case found the Petitioner of the offence under Section 138 of the N.I. Act and convicted him thereunder and sentenced him to undergo S.I. for one year and further directed the Petitioner to pay a sum of Rs.80,000/- to the complainant-Opposite Party No.2 as compensation.

8. The judgment dated 30.07.2018 passed in above noted ICC Case was assailed before the learned Sessions Judge, Balasore in Criminal Appeal No.57 of 2018. The appellate court after hearing the learned

counsels for both the sides, confirmed the judgment passed by the trial court and modified the sentence to the extent that the Petitioner shall pay a compensation amount of Rs.80,000/- and in default, to undergo further S.I. for two months while setting aside the sentence of one passed by the trial court.

9. Challenging the judgment and order of conviction dated 27.08.2019 passed by the learned Sessions Judge, Balasore in Criminal Appeal No.57 of 2018, the present revision petition has been filed by the Petitioner.

10. Mr. S.R. Mulia, learned counsel appearing for the Petitioner submits that the matter has been amicably settled with the complainant-Opposite Party No.2 and the Petitioner has paid a sum of Rs.80,000/- (rupees eighty thousand) to the complainant-Opposite Party No.2. In such view of the matter, learned counsel for the Petitioner submits that since matter has been amicably settled outside the court, the entire outstanding amount has been paid to the complainant-Opposite Party No.2 and the revision petition filed by the Petitioner may be allowed and the judgment and order of conviction by both the courts below be set aside.

11. Mr. R.R. Nayak, learned counsel appearing for the complainant-Opposite Party No.2 agrees with the submissions made by the learned counsel for the Petitioner. He further submits that the complainant-Opposite Party No.2 has received a sum of Rs.80,000/-(rupees eighty thousand) and that the dispute has been amicably settled between the parties and as such, he does not want to proceed further in the matter. The submissions made by learned counsel for the complainant is supported by an affidavit filed by the complainant-Opposite Party No.2.

12. Mr. M.K. Mohanty, learned Additional Standing Counsel appearing on behalf of the Opposite Party No.1-State submits that the State has nothing to say in the matter as the dispute is purely private and the same is between the Petitioner and the complainant-Opposite Party No.2. However, Mr. Mohanty, learned Additional Standing Counsel further relying upon the judgment of the Hon'ble Supreme Court of India in the matter ***Damodar S. Prabhu vs. Sayed Babalal H*** : reported in ***(2010) 5 SCC 663*** submits that as per the guidelines/direction issued by the Hon'ble Supreme Court of India, the parties should have compounded offence during the early stage of the litigation and that further continuance of the litigation has caused choking of the criminal justice system. Further in the aforesaid judgment, the Hon'ble Supreme Court of India has laid down a guideline for imposing cost on the parties, who have delayed in compounding the offences in cheque bounce cases. On a close scrutiny of the aforesaid judgment, it is found that the Hon'ble Supreme Court of India has observed that if the accused does not make an application for compounding at an early stage of trial and makes such an application at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding before the Legal Service Authority, or such authority as the court deems fit. It has been further observed that if the application for compounding is made before the Sessions court or High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of cost.

13. Further the law laid down by the Hon'ble Supreme Court of India in ***Damodar S. Prabhu's case (Supra)*** has been quoted with

approval in a latter decision of the Hon'ble Apex Court in the case of ***Gimpex Private Limited vs. Manoj Goel*** (decided on 08.10.2021) reported in **2021(4) Crimes 196 (SC)**. In paragraph 31 of the said judgment it has been observed as follows;

“31. Thus, under the shadow of Section 138 of the NI Act, parties are encouraged to settle the dispute resulting in ultimate closure of the case rather than continuing with a protracted litigation before the court. This is beneficial for the complainant as it results in early recovery of money; alteration of the terms of the contract for higher compensation and avoidance of litigation. Equally, the Accused is benefitted as it leads to avoidance of a conviction and sentence or payment of a fine. It also leads to unburdening of the judicial system, which has a huge pendency of complaints filed Under Section 138 of the NI Act. In ***Damodar S. Prabhu (supra)*** this Court had emphasised that the compensatory aspect of the remedy Under Section 138 of the NI Act must be preferred and has encouraged litigants to resolve disputes amicably.”

14. Moreover, the aforesaid view of the Hon'ble Supreme Court of India while compounding offences under section 138 of the N.I. Act has also been relied upon and referred to by a learned Single Judge Bench of this court in ***Khirod Kumar Sahu Vs. State of Odisha and Ors.***, reported in **2022(I) OLR 42**. Where in the guidelines issued by the Hon'ble Apex Court has also been reiterated by this Court.

15. There is no doubt that the offence under Section 138 of the N.I. Act can be compounded under Section 147 of the said Act notwithstanding anything contained in the Code of Criminal Procedure, 1973. Further the Hon'ble Supreme Court of India in the aforesaid judgment has observed that the compounding of offences under the Negotiable Instruments Act, 1981 is covered by under Section 147 of the N.I. Act and the scheme contemplated by Section 320 of the Code of Criminal Procedure will not be applicable in the strict sense to the cases covered under the N.I. Act. The provisions under Section 147 of

the N.I. Act, 1981 is in the nature of enabling provision which provides for compounding of offences prescribed under the very same Act, therefore, the same is an exception to the general rule incorporated in Section 320, Cr.P.C. Further, the provision under Section 147 of the N.I. Act having been enacted under a special Statute will have a overriding effect over Section 320(9), Cr.P.C. in view of the non-obstinate clause provided in Section 147 of the N.I. Act.

16. Further on the question whether offences under Section 138 of the N.I. Act could be compounded at a later stage of litigation?, the same has been answered by the Hon'ble Supreme Court of India in the matter of *K.M. Ibrahim vrs. K.P. Mahammed* ; reported in (2010) 1 SCC 798. In the said decision, it has been held that Section 147 of the N.I. Act being a provision in a special Statute, the same will have over-riding effect over the provisions relating to compounding of offences under Section 138 of the N.I. Act.

17. Having heard the contentions of the learned counsels for both sides and keeping in view the fact that the matter has been amicably settled between the parties and the parties are desirous to compound the offence under Section 147 of the N.I. Act, this court permits the parties to compound the offence, however, said compounding is subject to payment of cost. Although the petitioner is required to pay cost of Rs.8,250/-(rupees eight thousand two hundred fifty which is 15% of Rs.55,000/- i.e. the cheque amount) as per the guidelines of the Hon'ble Supreme Court, however considering the fact that the petitioner has served the sentence for some days, he is directed to pay a cost of Rs.5,000/-. The cost imposed shall be deposited with the Odisha State Legal Services Authorities, Cuttack within a period of two weeks from today. Resultantly, the order of conviction and the sentence under

section 138 of the N.I. Act dated 27.08.2019 passed by the learned Sessions Judge, Balasore in Criminal Appeal No.57 of 2018 and dated 30.07.2018 passed by the learned S.D.J.M., Nilgiri in I.C.C. No.465 of 2013 (New F. No.128 of 2015) are hereby set aside. Further it is directed that the Petitioner be set at liberty forthwith, if it is found that he is in custody and his detention is not required in any other case.

18. Before parting, this Court expresses its displeasure in conduct of the parties in delaying the settlement/compounding of the matter. This Court expects that in future the parties who are litigating a dispute involving a provision under Section 138 of the N.I. Act shall keep this in mind that it is in the interest of justice that the matter should be compounded at the first available opportunity without choking / blocking the criminal justice system unnecessarily by delaying the settlement in such type of cases.

19. Let a copy of this order along with copy of the judgment of the Hon'ble Supreme Court of India in the matter of **Damodar S. Prabhu vs. Sayed Babalal H:** reported in **(2010) 5 SCC 663** be communicated by the Registry to the Secretary, State Legal Services Authorities for giving wide publicity to the guidelines laid down by the Hon'ble Supreme Court of India for early settlement of the cases involving the offence under Section 138 of the N.I. Act.

20. The Criminal Revision is accordingly disposed of.

21. Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge