

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13193 -2018 (O & M)
Date of decision:05.05.2022

M/s Nidhi Knitwears (P) Ltd. and anr.

..... Petitioners

V/s

Honey Hosiery Mills

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Jyoti Sareen , Advocate,
for the petitioners.

Mr. Jitender Singh Dadwal, Advocate, for the respondent.

JASJIT SINGH BEDI, J. (Oral)

1. The present petition under Section 482 of the Code of Criminal Procedure has been filed with a prayer for the quashing of the order dated 21.03.2018 (Annexure P-5) passed by Sh. Kuldip Kumar Kareer, Additional Sessions Judge, Ludhiana, in Criminal Crl.A-6 dated 08.02.2016 titled 'Nidhi Knitwears versus Honey Hosiery Mills, vide which the application filed by the petitioner, for permission to compound the offence, has been dismissed.

2. The brief facts of the case are that the complainant/respondent M/s Honey Hosiery Mills filed a complaint, through its sole proprietor Anju Jain

against Chhote Lal Pandit, Director, M/s Nidhi Knitwears, on the ground that the respondent/complainant and petitioners/accused were having business deals and it was alleged in the complaint by respondent that in order to discharge his pre-existing legal liability, petitioner No.2 issued cheques bearing 525363 dated 16.10.2011 for a sum of Rs.77345/-, cheques bearing No.545364 dated 18.10.2011 for a sum of Rs.56251/- and cheque bearing No.541443 dated 10.10.2011 for a sum of Rs.91,400/- all drawn of Bank of Maharashtra, Ludhiana, totalling amount of Rs.2,24,996/-. It was the allegation in the complaint that the cheques were dishonoured with the remark 'payment stopped by drawer'.

3. Pursuant thereto, the accused -petitioners were summoned and finally convicted by the Court of the Judicial Magistrate Ist Class, Ludhiana vide judgment dated 12.01.2016 (Annexure P-1).

4. The petitioners thereafter filed an appeal against the above judgment in the Court of Sessions Judge, Ludhiana. During the pendency of the appeal, the petitioner filed an application for permission to compound the offence in view of the judgement rendered in “***Damodar S. Prabhu versus Syad Babalal H. 2010(2) Vol.V SCC 663***”, as the petitioners were ready to deposit the cheque amount as well as the relevant charges according to the said judgment.

The respondent-complainant filed a response to the application (Annexure P-3) effectively denying the possibility of a settlement (Annexure P-4).

5. Based on the respective pleadings of the parties, the application of the petitioners seeking permission to compound the offence was dismissed by the Court of the Additional Sessions Judge, Ludhiana vide order dated 21.03.2018 (Annexure P-5).

6. In the present case, notice of motion was issued on 02.04.2018 and passing of the final order by the lower Appellate Court was stayed. On 07.03.2022, the learned counsel for the respondent-complainant appeared and both the parties sought an adjournment to effect a settlement. Therefore, the matter was referred to the Medication and Conciliation Centre of this Court to explore the possibility of an amicable settlement. However, the same could not be effected and, therefore, the matter is now ripe for adjudication on merits.

7. The learned counsel for the petitioners contends that in view of the judgment in **Damodar S. Prabhu's case (supra)**, the petitioners were ready and willing to deposit the requisite amount so as to finally settle the matter. She contends that in terms of the judgment of the Hon'ble Supreme Court in ***"M/s Meters and Instruments Private Limited And Another versus Kanchan Mehta 2017(4) RCR (Criminal) 476"***, the consent of the complainant was not relevant and if the Court comes to the conclusion that the settlement was valid. the Court in the interest of justice, on being satisfied that the complainant had been duly compensated, can in its discretion, close the proceedings. Reliance has also been placed on the judgments of this Court in **(i) "*Hem Lata versus Balwant Singh (CRR-1221 of 2012 decided on 01.03.2019)*"**, **(ii) *Suba Singh versus Nirmal Singh and***

another, 2020(2) PLR 155. Reference has also been made to the judgment passed by the Himachal Pradesh High Court in the case of “**Vikas Jishtu versus Puran Chand Sharma and another, 2019 ACD 711**”.

8. The learned counsel for the complainant, on the other hand, relied upon a judgment in “**JIK Industries Limited and others versus Amarlal V. Jumnai and another 2012(1) RCR (Criminal) 822** and “**Anant Tools (Unit No.II) Pvt. Ltd. And others versus M/s Anant Tools Pvt. Ltd., Jalandhar, 2019(1) RCR (Criminal) 137** to contend that the consent of the complainant is essential to effect a settlement and the judgment in **Damodar S. Prabhu’s case (supra)** does not adjudicate upon the issue of requirement of consent for compounding an offence under the Act.

9. I have heard the learned counsel for both the parties at length.

10. Before proceeding further in the matter, it would be relevant to examine the judgments of the Hon’ble Supreme Court and this Court on the issue. In **Damodar S. Prabhu’s case (supra)**, it was held as under :-

“8. At this point, it would be apt to clarify that in view of the non obstante clause, the compounding of offences under the [Negotiable Instruments Act, 1881](#) is controlled by Section 147 and the scheme contemplated by Section 320 of the Code of Criminal Procedure (hereinafter “CrPC”) will not be applicable in the strict sense since the latter is meant for the specified offences under the Penal Code, 1860. So far as CrPC is concerned, Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the court, while sub-section

(2) of the said section specifies the offences which are compoundable with the leave of the court. [Section 147 of the Negotiable Instruments Act, 1881](#) is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-section (9) of Section 320 CrPC which states that “No offence shall be compounded except as provided by this section”. A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) CrPC, especially keeping in mind that Section 147 carries a non obstante clause.

15. With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the

first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate 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 with the Legal Services Authority, or such authority as the court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a 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 costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

17. We are also conscious of the view that the judicial endorsement of the above quoted Guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 CrPC cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the

*court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end. Even in the past, this Court has used its power to do complete justice under **Article 142 of the Constitution** to frame guidelines in relation to the subject-matter where there was a legislative vacuum”.*

In *JIK Industries Limited and others versus Amarlal V. Jumani and another*, 2012(1) RCR (Criminal) 822, the Hon’ble Supreme Court held as under:-

“68. Both these aforesaid decisions were referred to and approved in Damodar (supra). The decision in Damodar (supra) was rendered by referring to [Article 142](#) of the Constitution insofar as guidelines were framed in relation to compounding for reducing pendency of 138 cases. In doing so the Court held that attempts should be made for compounding the offence early. Therefore, the observations made in paragraph 24 of Damodar (supra), that the scheme contemplated under [Section 320](#) of the Code cannot be followed ‘in the strict sense’ does not and cannot mean that the fundamental provisions of compounding under [Section 320](#) of the Code stand obliterated by a side wind, as it were.

69. It is well settled that a judgment is always an authority for what it decides. It is equally well settled that a

judgment cannot be read as a statute. It has to be read in the context of the facts discussed in it. Following the aforesaid well settled principles, we hold that the basic mode and manner of effecting the compounding of an offence under [Section 320](#) of the Code cannot be said to be not attracted in case of compounding of an offence under Negotiable Instruments in view of [Section 147](#) of the same.

73. In our country also when [the Criminal Procedure Code](#), 1861 was enacted it was silent about the compounding of offence. Subsequently, when the next [Code of 1872](#) was introduced it mentioned about compounding in [Section 188](#) by providing the mode of compounding. However, it did not contain any provision declaring what offences were compoundable. The decision as to what offences were compoundable was governed by reference to the exception to [Section 214](#) of the Indian Penal Code. The subsequent [Code of 1898](#) provided [Section 345](#) indicating the offences which were compoundable but the said Section was only made applicable to compounding of offences defined and permissible under Indian Penal code. The present Code, which repealed the 1898 Code, contains [Section 320](#) containing comprehensive provisions for compounding. A perusal of [Section 320](#) makes it clear that the provisions contained in [Section 320](#) and the various sub-sections is a Code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of [Section 147](#) in the [Negotiable Instruments Act](#), the entire gamut of procedure of [Section 320](#) of the Code are made inapplicable to compounding of an offence under the [Negotiable Instruments Act](#), in that case the compounding of offence under Negotiable Instruments Act will be left totally unguided or uncontrolled. Such an interpretation

apart from being an absurd or unreasonable one will also be contrary to the provisions of [Section 4\(2\)](#) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under Negotiable Instruments Act. Therefore, [Section 147](#) of the Negotiable Instruments Act must be reasonably construed to mean that as a result of the said Section the offences under [Negotiable Instruments Act](#) are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of [Section 147](#) of Negotiable Instruments Act.

In “*M/s Meters and Instruments Private Limited And Another versus Kanchan Mehta 2017(4) RCR (Criminal) 476*”, the Hon’ble Supreme Court by taking a somewhat contrary view held 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 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.

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 dishonor 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.

In “***M/s Anant Tools (Unit No.II) Pvt. Ltd. And Others versus M/s Anant Tools Pvt. Ltd., Jalandhar, 2019(1) RCR (Criminal) 137***, this Court held as under:-

“9. *Having heard learned counsel for the parties, this Court finds that the arguments raised by the learned counsel for the petitioners are not legally sustainable. So far as the compromise between the parties, under which the petitioner can take recourse, is concerned, the same has already been held to be finally revoked by this Court, with further liberty to the respective parties; to prosecute their criminal cases against each other. Therefore, by any means, it would not have been possible for the trial Court to give effect to any kind of agreement/ compromise or consent; on the part of the complainant on its own. Hence, the only question; which the trial Court could have considered is, whether the application filed by the petitioner for compounding of the offence under [Section 138](#) of Negotiable Instruments Act, would have been allowed even without consent of the complainant. The trial Court has rightly rejected the application for compounding moved by the petitioners; for the lack of necessary consent from the complainant. This Court does not find any illegality or infirmity in the order passed by the trial Court.*

10. So far as judgments cited by the learned counsel for the petitioner are concerned, this Court finds substance in the argument of the learned counsel for the respondents; that the judgment of the Hon'ble Supreme Court rendered in *Damodar S. Prabhu's case (supra)* does not specifically deal

with the issue of compounding of an offence under [Section 138](#) of Negotiable Instruments Act in absence of consent of the complainant. This judgment; primarily; proceeds on the assumption that, in the facts of that particular case, there was a consent between the parties. The dispute in that case was only regarding the stage at which the parties can; appropriately; be permitted to compound the offence under [Section 138](#) of Negotiable Instruments Act. Although the Hon'ble Supreme Court held that even under [Section 147](#) of NI Act, the offence under [Section 138](#) of Negotiable Instruments Act can be compounded at any stage, however, the Hon'ble Supreme Court laid down a graded scale of costs, to be paid by the party applying for compounding; with reference to the stage of proceedings; at which the compounding has been sought by the party. Beyond that, this judgment has no significance; so far as the question of consent of the complainant for compounding is concerned.

11. The above said judgment of the Supreme Court rendered in Damodar S. Prabhu's case (supra), has specifically been considered by the subsequent Bench of Hon'ble Supreme Court in case of JIK Industries Limited's (supra). While explaining the scope of consideration in Damodar S. Prabhu's case (supra), the Hon'ble Supreme Court in the case of JIK Industries Limited's (supra), has held that; this judgment cannot be interpreted to mean that applicability of [Section 320 Cr.P.C](#) stands altogether obliterated due to use of non-obstante clause in [Section 147](#) of the Negotiable Instruments Act. The Court in JIK Industries Limited's case (supra) also held that the basic ingredients of [Section 320 Cr.P.C](#) do not stand excluded merely because of uses of non-obstante clause in [Section 147](#). It has been further held that the use of the non-obstante clause in a statute has to be considered with reference to the context in which it has been used. Accordingly, it has been held that the

basic ingredient of compounding, i.e., the consent of the other side, the complainant in the present case, cannot be dispensed with while considering any application for compounding. This proposition qua compounding has been contrasted by the Hon'ble Supreme Court, in this judgment, as against the proceedings- where the quashing of a complaint is sought by the accused. The Supreme Court has held that quashing of a complaint stands on a different footing and it can be ordered even without the consent of the complainant. However, compounding is altogether a different concept, and the same cannot be resorted to or applied by the Court; except with the consent of the complainant.

12. Although the counsel for the petitioners has rightly relied upon the subsequent judgment of the co-ordinate Bench of the Hon'ble Supreme Court rendered in M/s Meters and Instruments Private Limited's case (supra), however, this Court finds that this judgment, though has referred to the earlier judgment of the Supreme Court rendered in JIK Industries Limited's case (supra), however, has neither overruled the same nor has taken a detailed discussion regarding the proposition, which was specifically decided by the Hon'ble Supreme Court in the case of JIK Industries Limited's case (supra). Therefore, this Court is faced with a piquant situation, where there are two judgments from two co-ordinate Benches of the Hon'ble Supreme Court on the same proposition, but are diametrically opposed to each other. However, this dilemma has also been put to peace by the Hon'ble Supreme Court in another Constitutional Bench judgment, rendered in 2017(4) RCR (Civil) 1009 - [National Insurance Company Limited v. Pranay Sethi and others](#). In this judgment, the Hon'ble Supreme Court has amply clarified that; in case the subsequent Bench of equal strength does not intend to follow the earlier Bench of the same strength; then the appropriate course for the subsequent Bench

is only to refer the matter to the larger Bench. It has further been clarified that in case this recourse is not adopted by the subsequent Bench, then it is the judgment first in point of time; which shall be a binding precedent on that point of law and not the subsequent judgment.

13. In view of this pronunciation of the law by the Constitutional Bench judgment of the Supreme Court in Pranay Sethi's case (supra), this Court finds that; it has to follow the judgment rendered by the Hon'ble Supreme Court in case of JIK Industries Limited's case (supra), which mandated the content of the complainant for compounding of the offence under [Section 138](#) of NI Act.

14. In the present case, admittedly, there is no consent for compounding on the part of the complainant, therefore, it was impermissible for the trial Court to permit compounding merely on unilateral application moved by the petitioner/accused. Hence the trial Court has not committed any illegality by declining the application for compounding. So far as other relief prayed for in this petition, qua quashing of complaint and summoning orders, on merits of the case are concerned, this Court does not find any factual or legal basis for those reliefs. Neither any serious arguments were addressed qua that aspect”.

In “***Hem Lata versus Balwant Singh (CRR-1221 of 2012 decided on 01.03.2019***”, this Court has held as under:-

6. 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.*

9. *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.

10. *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.*

This Court in “**Suba Singh versus Nirmal Singh and another 2020(2) PLR 155**, did not consider the judgment in **JK Industries Limited and others (supra)** but held as under:-

*“6. Compounding of the offence under Section 138 of the Negotiable Instruments Act, 1881, without the consent of the complainant has been drawing attention of the Courts from time to time and Hon'ble the Supreme Court in the case of **Damodar S. Prabhu Vs. Sayed Babalal H., (2010) 5 SCC 663**, had considered this aspect in detail and laid down certain guidelines. Subsequently, once again in the case of*

M/s Meters and Instruments Private Limited and another Vs. Kanchan Mehta, AIR 2017 SC 4594, it has been held that since offence under Section 138 of the Negotiable Instruments Act, primarily civil wrong, therefore, the Court can order compounding unilaterally as the object of the provision is primarily compensatory and punitive element is mainly with the object of enforcing the compensatory element.

In “*Vikas Jishtu versus Puran Chand Sharma and another, 2019 ACD 711*”, the law laid down in “*M/s Meters and instruments private Limited and another’s case (supra)*” was followed but the judgment in *JK Industries Limited and others (supra)* was not considered.

11. The contention of the learned counsel for the petitioners-accused that the judgment in **Damodar S. Prabhu (supra)** was also to this effect that a compromise can be effected without the consent of all the parties, and that Section 320 Cr.P.C. has no application, is fallacious. This judgment proceeds primarily on the assumption that there was a consent between the parties. The dispute, in this case, was only the stage at which the parties can appropriately be allowed to compound the offence. In **JK Industries’ case (supra)**, however, the precise issue was as to whether the consent of the parties was necessary to compound the offence and it was held that the basic mode and manner of effecting the compounding of an offence under Section 320 Cr.P.C. cannot be said to be not attracted in case compounding of offence under Section 147 of the Negotiable Instruments Act. In fact Section 320 Cr.P.C. enumerates the manner in which the offences are to be compounded whereas Section 147 of the Act makes the offences under the

Act compoundable without explaining the manner in which the compounding is to take place. Even in Para 18(iii) of the judgment in **M/s Meters and Instruments’ case (supra)**, the Court has stated that thought compounding requires the consent of both the parties, even in the absence of such consent, the Court in the interest of justice can, in its discretion, close the proceedings. This effectively means that compounding requires consent but quashing does not. Therefore, even as per **M/s Meters and Instruments (supra)**, the accused cannot as a matter of right claim that a settlement should be effected because he is unilaterally willing to make the good the payment. Of course, the Court in its discretion, may quash such proceedings if it feels that the claim of the complainant is satisfied and he has been adequately compensated.

12. This Court in **M/s Anant Tools’s case (supra)**, has comprehensively dealt with the judgments in **JIK Industries’ case (supra)** and **M/s Meters and Instruments’ case (supra)**. In Para 12 of the judgment (reproduced hereinabove), a co-ordinate Bench of this Court came to the conclusion that if a subsequent Bench of the Hon’ble Supreme Court differs with the view taken by an earlier Bench of equal strength, then the only course open for the subsequent Bench is to refer the matter to a larger Bench. In case, the above option has not been exercised by the subsequent Bench, then it is the view taken by an earlier Bench of the equal strength, which is to prevail. In **Hem Lata’s case (supra)**, the decision in **JIK Industries Limited and others (supra)** is referred but there is no discussion as to why the Court has chosen to follow the law laid down in **M/s Meters and Instruments (supra)** and

Singh (supra) and **Vikas Jishtu (supra)**, the reliance has been placed on **M/s Meters and Instruments (supra)** alone and **JK Industries Limited and others (supra)** has not been referred to at all.

13. In the case of *“M/s Indo Swiss Time Limited versus Umrao and others, 1981 AIR (Punjab and Haryana) 213”*, this Court has held that when judgments of the superior Court of co-equal Benches and therefore, of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is, thus, clear that when two directly conflicting judgments of the superior Court and of equal authority are extant then both of them cannot be binding on the Courts below. In such a situation, it is the plain duty of the High Court in the interest of justice to respectfully follow that which appears to it to state the law accurately or, in any case, more accurately than the other conflicting judgments. Applying the said principle to the present case, apparently, the judgment in **Anant Tools (Unit II) Pvt. Ltd. and others (supra)** lays down the law more accurately than the judgments in the cases of **Hem Lata (supra)**, **Suba Singh (supra)** and **Vikas Jishtu (supra)**.

13. Coming back to the facts of the present case, the cheques pertain to the year, 2011 totalling a sum of Rs.2,24,996/-. As per the learned counsel for the petitioners, the petitioners were willing to make a payment of Rs.4,00,000/-. This payment of Rs.4,00,000/- after ten years of the issuance of the cheques, in the opinion of this Court, is grossly inadequate and is not sufficient to compensate the complainant so as to enable this

Court to exercise its discretion to close the proceedings, particularly, in the circumstances, when the complainant is not willing to consent to compounding.

14. In view of the aforesaid discussion, there is no merit in the instant petition, and therefore, the same is dismissed.

May 05, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No