

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 320 of 2020**

**Gouranga Chowdhury**

**Vs**

**The State of West Bengal & Anr.**

**For the Petitioner** : Mr. Kingsuk Mondal.

**For the State** : None.

**For the Opposite Party No. 2** : None.

Heard on : 20.04.2023

Judgment on : 12.05.2023

**Shampa Dutt (Paul), J.:**

1. The present revision has been preferred against the Judgment and Order No. 14 dated 30/08/2019 passed by the Learned Sessions Judge, Birbhum at Suri in Criminal Appeal No. 27 of 2018 confirming and/or affirming the Judgment and Order dated 29.06.2018 passed by the Learned Judicial Magistrate, 3<sup>rd</sup> Court, Suri, Birbhum in Complaint Case No. 273 of 2014, holding the accused person guilty for committing offence under Section 138 of the Negotiable Instrument Act and convicted him under Section 255(2) of the Criminal Procedure Code and sentenced him to pay compensation of Rs. 2,25,000/- within six months from the date of judgment in default to suffer simple imprisonment for six months and it was further directed therein that the compensation, if and when paid would be disbursed to the authorized representative of the complainant, on proper verification and identification.
2. The petitioner's case is that a cheque vide No. 792357 dated 23.04.2014 amounting to Rs. 2,20,000/- drawn from the account maintained by him was issued to the opposite party No. 2 herein in discharge of the loan of Rs. 2,30,000/- taken from the opposite party no. 2 for purchase of a vehicle bearing no. WB/53/8888 and the said cheque was presented for encashment with the banker of the complainant but the said cheque was returned dishonoured vide cheque return memo dated 24/04/2014 and the complainant then issued a demand notice through his Ld. Advocate on

15.05.2014 to the petitioner herein, which was received by the accused petitioner on 19.05.2014 and thereafter the said complaint was filed and the same was registered as CR Case No. 273 of 2014 under Section 138 of the Negotiable instruments Act, 1881.

3. After due hearing on 29.06.2018 the Learned Court holding the accused person guilty for committing offence under Section 138 of the Negotiable Instruments Act, convicted him under Section 255(2) of the Criminal Procedure Code and sentenced him to pay compensation of Rs. 2,25,000/- within six months in default to suffer simple imprisonment for six months and it was further directed therein that the compensation, if and when paid would be disbursed to the authorized representative of the complainant, on proper verification and identification.
4. Being aggrieved by and dissatisfied with the order dated 29.06.2018. The petitioner preferred an appeal before the Learned Sessions Judge, Birbhum at Suri and after due hearing, on 31.08.2019 the Learned Judge was pleased to affirm the order of conviction dated 29.06.2018.
5. The petitioner's case is that he took loan and entered into agreement with the opposite party vide Loan Agreement No. : BIRBU0306180003 in respect of Vehicle No. WB53/8888 and three cases were started under Section 138 NI Act with respect to the same vehicle vide Complaint Case No. C/273/14, C/92/15, C/628/17 and during pendency of the appeal, the petitioner entered into **settlement of dispute amicably** and in terms of settlement the opposite party was pleased to issue a "No Dues

Certificate” and on full satisfaction the opposite party after amicable settlement received the due amount and issued the said “No Dues Certificate” thereof.

6. That after issuance of the “No Dues Certificate” the opposite party as well as the Advocate of the opposite party undertook to inform the matter to the court through his Learned Advocate and assured the petitioner that they would not proceed against him further. On bonafide belief the petitioner did not turn up in court on good faith that the Learned Advocate of the opposite party would inform the matter of settlement and issuance of “No Dues Certificate”. On enquiry the petitioner came to know that the appeal was dismissed due to no steps taken by the appellant/petitioner.
7. **In spite of due service, there is no representation on behalf of the opposite party no. 2 in this case.**
8. **Mr. Kingsuk Mondal, learned counsel for the petitioner** has submitted that the matter has been amicably settled and the complainant/opposite party has issued a “No Dues Certificate” in favour of the petitioner regarding the dispute in this case, copies of the said “No Dues Certificate” dated 15.05.2019 and 24/illegible/19 in respect of the dispute in this case are at page 30 and 31 to the revisional application. The said certificates have been issued to the petitioner by the authorized person of the opposite party no. 2.
9. It is seen that the Trial Court vide order dated 29.06.2018 sentenced the petitioner/accused to pay compensation of Rs. 2,25,000/- in default to

suffer simple imprisonment of six months. The compensation was to be paid to the complainant.

10. The Appellate Court on 30.08.2018 affirmed the order of the Trial Court dated 29.06.2018.
11. The revision has been preferred on 27.01.2020.
12. The “No Dues Certificate” is dated 15.05.2019. It has also been stated that the loan account in this case has been closed as settled.
13. **The relevant portion of the “No Dues Certificate” dated 15.05.2019 is as follows:-**

*“It is pleased to inform you that we have settled your loan agreement no. **BIRBU0306180003**, related to vehicle documents.*

*Therefore, we have closed above Loan Account. Hence, we are not going to initiate any legal action against you related to above referred Loan Agreement. Thanks for your co-operation.*

**Sd/-**  
**Shriram Transport Finance Company Ltd.”**

14. **The Certificate dated 24/illegible/19 is as follows:-**

*“It is pleased to inform that we have settled this vehicle no. WB/53/8888, loan agreement no. BIRBU0306180003 related to Case No. C/273/14, C/92/15, C/628/17 or (appeal) 27/18.*

*It is pertinent to note that no other loan agreement has been arrived at between the company and Gouranga Chowdhury in respect of any other vehicles save and except the above mentioned vehicle.*

*Thus the confine loan account is closed.*

**Sd/-**  
**Shriram Transport Finance Company Ltd.”**

15. The Supreme Court in ***B.V. Sessaiah vs. The State of Telangana & Anr. and B. Vamsi Krishna vs. The State of Telangana & Anr., (2023 Live Law(SC) 75) on 1<sup>st</sup> February, 2023*** held:-

*“8. In our view, the terms ad conditions of the settlement entered into by the parties binds them to settle the dispute amicably, or through an arbitration as has been stated in clause 8 of the Memorandum of Understanding.*

*9. In such a circumstance, the Appellants cannot be convicted on the basis of the orders passed by the courts below, as the settlement is nothing but a compounding of the offence.*

*10. In the case of **M/s. Meters and Instruments Private Limited & Anr. Vs. Kanchan Mehta**, this court held that the nature of offence under section 138 of the N.I. Act is primarily related to a civil wrong and has been specifically made a compoundable offence. The relevant paragraph of the judgement has been extracted herein:*

*“This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions' cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 payee and credibility of business transactions suffers a setback. At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 amendment specifically made it compoundable.”*

*11. This is a very clear case of the parties entering into an agreement and compounding the offence to save themselves from the process of litigation. When such a step has been taken by the parties, and the law very clearly allows to do the same, the High Court then cannot override such compounding and impose its will.”*

16. Thus as it is seen that the sentence of compensation imposed by the Trial Court and affirmed by the Appellate Court has been duly complied with by the petitioner. The judgment and order under revision dated 30/08/2019 passed by the Learned Sessions Judge, Birbhum at Suri in Criminal Appeal No. 27 of 2018, is hereby affirmed.
17. There being no substantive sentence, the revisional application being **CRR 320 of 2020 is accordingly disposed of.**
18. There will be no order as to costs.
19. All connected Applications stand disposed of.
20. Interim order if any stands vacated.
21. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
22. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**