

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2020 of 2019

With

CRAN No. 1 of 2023

Gopal Agarwal (In Custody)

Vs

State of West Bengal & Anr.

For the Petitioner

: Mr. Sourav Chatterjee,
Ms. Mili Saha,
Mr. Mitul Chakraborty,
Ms. Namrata Chatterjee.

For the Opposite Party No.2

: Mr. Ramashis Mukherjee,
Mr. Rameshwar Sinha.

Heard on

: 07.02.2023

Judgment on

: 09.02.2023

Shampa Dutt (Paul), J.:

The revisional application had been preferred against judgement and order dated 24.04.2019 passed by the Learned Additional Session Judge, 1st Court, Howrah in Criminal Appeal No.40 of 2018 affirming the judgement and order dated 07.02.2018 passed by the Learned Judicial Magistrate, 5th Court Sadar, Howrah in connection with 1372 C of 2014 (TR No.585 of 2011).

The petitioner's case is that in a proceeding under Section 138 of the N.I. Act, 1881 the learned Judicial Magistrate, 5th Court Sadar, Howrah was pleased to convict the petitioner to suffer simple imprisonment for one month and also to pay a compensation of Rs. 40,00,000/- in default simple imprisonment for six months more. The said judgment and order was affirmed by the learned Additional District & Session Judge, 1st Court, Howrah.

Hence, the revision.

CRAN 1 of 2023 has now been filed jointly by both the parties stating that a compromise/settlement has been arrived at between the parties and an amount agreed upon by both the parties has been paid by the petitioner/accused. **The dispute/offence in this case is compoundable and has been settled and resolved amicably.** The grounds of settlement has been stated in the joint petition of compromise filed on affidavit by both the parties. It has been specifically stated on affidavit by the opposite party no.2/complainant that in view of the said amicable settlement of dispute **he**

does not wish to proceed against the petitioner in the impugned proceeding as he does not have any grievance against the petitioner at present.

Learned counsel for both the parties have submitted as per the affidavit filed before this court and have relied upon certain judgments.

Learned counsel for the petitioner has further submitted that during the pendency of this revisional application, the petitioner is in custody and has suffered detention for almost the substantive sentence.

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 1st 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.”*

Considering the said position of law as laid down by the Supreme Court, the present revisional application along with CRAN 1 of 2023, which be made part of the record, **stands allowed.**

The order of conviction dated 07.02.2018 passed by the learned Judicial Magistrate, 5th Court Sadar, Howrah in 1372 C of 2014 (TR No. 585 of 2011) and affirmed by the learned Additional District & Session Judge, 1st Court, Howrah on 24.04.2019 in Criminal Appeal No. 40 of 2018 **are hereby set aside.**

The petitioner/accused is accordingly discharged from the case and be set at liberty at once.

The revisional application being CRR 2020 of 2019 along with CRAN 1 of 2023 are accordingly disposed of on compromise.

There will be no order as to costs.

All connected Applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Copy of this judgment be sent to the Trial Court forthwith for necessary compliance.

Parties to act on the basis of server copy of this judgment and order duly downloaded from the official website of this Hon'ble Court.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties as expeditiously as possible after complying with all legal formalities.

(Shampa Dutt (Paul), J.)