IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1399 of 2020

Abdul Somi Mondal

Vs.

Shriram Transport Finance Company Ltd.

For the Petitioner : Mr. Saryati Datta,
Mr. Sanjib Kr. Dan,
Mr. Chitrak Biswas.

For the Opposite Party : None.

Heard on : 19.07.2023

Judgment on : 11.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against a judgment and order dated 29th October, 2019 passed by the Learned Sessions Judge, Birbhum in Criminal Appeal No. 47 of 2018 thereby affirming the order dated 27.09.2018 passed by the Learned Judicial Magistrate, 3rd Court, Suri, Birbhum in connection with Complaint Case No. C/31/2016 under Section 138 of the Negotiable Instruments Act whereby the learned Magistrate was pleased to direct payment of compensation of

Rs.5,80,000/- to the opposite party within six months from the date of the order i.d. to suffer simple imprisonment for six months.

2. The fact of the case is that the opposite party's company is carrying on business of financing and used to lend money to its customer for various transporting business. Petitioner is one of such customers. The petitioner applied for a loan before the opposite party and the opposite party sanctioned a loan of Rs.6,50,000/- vide loan Agreement No. BIRBUO312310007 to the petitioner for purchase of a vehicle being no. WB53A/9157 and the said sanctioned amount was also disbursed to the petitioner. The petitioner became irregular in payment of the monthly installment along with interest. The petitioner then gave one cheque duly signed being no.099360 dated 07.12.2015 of Rs.5,75,000/- (Rupees Five Lakh Seventy Five Thousand only) of State Bank towards payment of his arrear monthly loan installment with interest in part, in the name of the opposite party. The opposite party then presented the said cheque for encashment but the said cheque was dishonoured on the ground of "insufficiency of fund" vide its cheque return memo dated 09.12.2015. Thereafter the opposite party through his lawyer issued a demand notice dated 24.12.2015 through Registered Post with A/D. The petitioner duly received the said demand notice but did not pay the dishonoured cheque amount within the statutory period as such the opposite party filed the present complaint case No. C/31/2016 against the petitioner under Section 138 of the Negotiable Instruments Act.

3. The Learned Judicial Magistrate, 3rd Court, Suri, Birbhum vide his judgment and order dated 27.09.2018 was pleased to convict the petitioner under Section 138 of the Negotiable Instruments Act and was pleased to direct payment of compensation of Rs.5,80,000/- to the opposite party within six months from the date of the order i.d. to suffer simple imprisonment for six months.

4. Being aggrieved by and/or dissatisfied with the judgment and order dated 27.01.2018 the petitioner preferred a Criminal Appeal being No. 47 of 2018 before the Court of the Learned Sessions Judge, Birbhum at Suri.

5. **It is further submitted that subsequently a settlement was entered into between the petitioner and the opposite party.** A full and final settlement has been entered between the parties and Rs.3,90,000/- has been fixed as the amount towards the loan Agreement No. BIRBUO312310007 for Vehicle No. WB53A-9157 to be paid by the petitioner. The petitioner till date out of the aforesaid amount has paid Rs.2,30,000/-. But subsequently on account of the outbreak of the pandemic, COVID-19, and the consequent implementation of the countrywide lockdown by the Government of India, **the petitioner is unable to pay the rest the amount.**

6. **Mr. Saryati Datta, learned counsel for the petitioner** has submitted that Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court. But Hon'ble Apex Court in various judgments observes that at any stage the offence under Section 138 of the Negotiable Instruments Act can be compounded under Section 147 of the said Act.

7. Thus it is submitted that the impugned judgment and order of conviction and sentence is perverse and suffers from inherent infirmities and is also not tenable in law and is liable to be set aside.

8. In spite of due service there is no representation on behalf of the opposite party.

9. The judgment and order under revision is dated 29.11.2019.

10. Subsequently, a settlement was entered into between the petitioner and the opposite party. A full and final settlement has been entered between the parties and Rs.3,90,000/- has been fixed as the amount towards the loan Agreement No. BIRBUO312310007 for Vehicle No. WB53A-9157 to be paid by the petitioner. It is submitted that the petitioner till date out of the aforesaid amount has paid Rs.2,30,000/-. But subsequently on account of the outbreak of the pandemic, COVID-19, and the consequent implementation of the countrywide lockdown by the Government of India, the petitioner admittedly could not pay the rest of the amount.

11. The said full and final settlement letter issued by the opposite party is dated 24.01.2020 and reads as follows:-

> *"This is to confirm that the full and final settlement amount of loan no.- BIRBUO312310007, Vehicle no. – WB53A-9157 is Rs.3,90,000/- (1,30,000/- Paid on 24.01.2020 & rest Rs.2,60,000/- within dated- 31/01/2020)."*

12. The said settlement has been arrived at after the judgment under revision. The only contention of the petitioner is as the matter has now been settled, necessary orders may be passed.

13. It appears from the materials on record that the amount reduced to Rs. 3,90,000 by the complainant/opposite parties is a lot less than the compensation amount of Rs. 5,80,000. In spite of that the petitioner has not made the full payment.

14. The Supreme Court in ***B.V. Seshaiah vs. The State of Telangana & Anr. and B. Vamsi Krishna vs. The State of Telengana & 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:*
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> > *"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."*

15. But in the present case it is admitted by the petitioner that the total amount as settled with the opposite party has not been paid by the petitioner.

16. Thus the said settlement has failed on the part of the petitioner. As such the present case cannot be compounded as prayed for.

17. On perusal of the materials on record, the order dated 29th October, 2019 passed by the Learned Sessions Judge, Birbhum in Criminal Appeal No. 47 of 2018 thereby affirming the order dated 27.09.2018 passed by the Learned Judicial Magistrate, 3rd Court, Suri, Birbhum in connection with Complaint Case No. C/31/2016 under Section 138 of the Negotiable Instruments Act whereby the learned Magistrate was pleased to direct payment of compensation of Rs.5,80,000/- to the opposite party within six months from the date of the order i.d. to suffer simple imprisonment for six months being in accordance with law needs no interference and is thus affirmed.

18. The revisional application being CRR 1399 of 2020 is accordingly dismissed.

19. All connected applications, if any, stands disposed of.

20. Interim order, if any, stands vacated.

21. Copy of this judgment be sent to the learned Trial Court 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.)