

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

CRM-A-1237-MA of 2010 (O&M)
Date of Decision:02.05.2023

The Haryana State Co-operative Supply & Marketing Federation
Limited

...Applicant

Versus

Rakesh C. Jain

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Pankaj Nanhera, Advocate for
Mr. Sunil Panwar, Advocate
for the applicant.

Mr. Paras Chaudhary, Advocate
for the respondent.

N.S.SHEKHAWAT, J.

1. The present application under Section 378(4) Cr.P.C. for grant of leave to appeal is directed against the judgment dated 05.08.2010 passed by the Court of Mr. Vimal Kumar, learned Additional Sessions Judge, Rewari, whereby, he set-aside the judgment dated 18.04.2007 and order of sentence dated 19.04.2007 passed by the Court of learned Sub Divisional Judicial Magistrate, Kosli and acquitted the respondent.

2. The applicant/complainant had filed the criminal complaint under Section 138/142 of the Negotiable Instruments Act 1881 (hereinafter referred to as '**the Act**') against the respondent/accused and others in the Court of learned Sub-Divisional Judicial Magistrate (SDJM) Kosli and after holding the trial, vide judgment dated 18.04.2007, the learned SDJM Kosli held the respondent/accused guilty and convicted him for the commission of

offence punishable under Section 138 of the Act and vide order dated 19.04.2007, he was sentenced to undergo rigorous imprisonment for a period of one year and was also directed to pay a sum of Rs. 4 lacs as compensation to the applicant/complainant. Against the judgment and order passed by the learned trial Court, the respondent/accused preferred an appeal before the learned Additional Sessions Judge Rewari and vide the impugned judgment dated 05.08.2010, the learned appellate Court set-aside the impugned judgment dated 18.04.2007 and the order of sentence dated 19.04.2007 passed by the learned trial Court and acquitted the respondent of accusation. However, he was directed to deposit a sum of Rs. 3 lacs with the trial Court within a period of one month from that date, which was held payable to the applicant/complainant.

3. The facts of the case are that on 20.07.1998, the Haryana State Cooperative Supply & Marketing Federation Limited, applicant/complainant filed a criminal complaint under Section 138/142 of the Act against M/s Rajasthan Breweries Limited and other accused. The applicant averred in the criminal complaint that the respondent/accused had purchased barley malt on credit from the applicant on various dates total amounting to Rs. 79,15,149.25/- during the period from August 1995 to March 1998. The respondent used to make payment on different rates. After adjusting the payment towards the principal amount and interest, a sum of Rs. 45,84,677/- was due towards the respondent as on 17.07.1998. The respondent and other accused were the persons responsible and incharge of the accused/Company for the conduct of the business of the company and

the company through its authorized signatory issued an account payee Cheque bearing No. 773146 dated 07.04.1988 for a sum of Rs. 2 lacs in discharge of the liability. The applicant presented the said cheque for encashment and vide memo dated 13.05.1998, the cheque was returned and the applicant was informed that the cheque in question had dishonoured due to the reason “exceeds arrangement”. When the applicant received the memo on 26.05.1998, he made a telephonic call to the respondent to make the payment, but he flatly refused. A legal notice dated 01.06.1998 was sent and was received back by the applicant on 05.06.1998 with the comments that the Company was closed. Ultimately, the applicant/complainant filed the present complaint before the learned trial Court.

4. As observed above, the learned trial Court had convicted the respondent under Section 138 of the Act and sentenced to undergo rigorous imprisonment for a period of one year and to make a payment of Rs. 4 lacs to the applicant as compensation. However, before the learned appellate Court, the learned counsel for the respondent stated that without prejudice to the defence in the trial Court, the respondent/accused was prepared to deposit a demand draft in the sum of Rs. 2 lacs, payable to the applicant/complainant in order to compromise the matter. Learned counsel for the respondent further stated that since the inception, the accused wanted to compromise the matter and he might be permitted to deposit the amount without imposing any costs. The learned appellate Court held that the respondent/accused had been willing to enter into a compromise to compound the offence. However, the applicant/complainant had no

intention to enter into a compromise. Consequently, even without the consent of the applicant/complainant, compounding of offence was permitted subject to making the payment of Rs. 3 lacs, i.e. Rs. 2 lacs as cheque amount and Rs. 1 lac as compensation by the respondent/accused to the applicant/complainant. The learned appellate Court further held that the respondent had been willing to compromise from the very beginning, so no costs for compounding were to be deposited with the Legal Services Authority by the respondent. In view of these findings, the judgment dated 18.04.2007 and order dated 19.04.2007 passed by the learned trial Court were set-aside and the respondent was ordered to be acquitted of the accusation and was directed to deposit a sum of Rs. 3 lacs with the learned trial Court within a period of one month, which would be payable to the present applicant. It was also observed that in case of default of this order, the impugned judgment and order passed by the learned trial Court would come into force.

5. The impugned judgment passed by the appellate Court has been challenged by the present applicant/complainant on the ground that the offence committed by the respondent could have been compounded only with the consent of the applicant. Since there was no consent of the present applicant/complainant, the learned appellate Court wrongly allowed compounding of the offence and the impugned judgment was wholly without jurisdiction. Learned counsel for the applicant further contended that the compounding of the offence under Section 138 of the Act could have been done only with the consent of the parties and even amount of compensation awarded

by the appellate Court was on the lower side as the cheque of Rs. 2 lacs had dishonoured on 26.05.1998 and the applicant was pursuing litigation for the last more than 12 years.

6. On the other hand, learned counsel appearing on behalf of respondent/accused submitted that even though compounding of offence under Section 138 of the Act require consent of both the parties; however, even in absence of the consent of the complainant, the Court could exercise its discretion and finding that complainant had been adequately compensated, the accused could be discharged and the proceedings could be dropped. Even in the present case, from the very beginning, the respondent had been willing to enter into a compromise and had also offered to pay the amount of cheque to the applicant but the applicant did not agree to the said proposal. Learned counsel for the respondent also submitted that the respondent got a demand draft dated 12.09.2004 (Mark-B) prepared and also offered the same to the applicant vide forwarding letter Mark A, but the demand draft was not accepted by the present applicant. Learned counsel further contended that the applicant had been adequately and suitably compensated by the learned appellate Court, so it would be unfair to set-aside the impugned judgment after several years. The learned counsel for the respondent has relied upon the law laid down by the Hon'ble Supreme Court in the matters of **Damodar S. Prabhu Vs. Sayed Bablal H. (Criminal Appeals No. 963 of 2010 with Nos. 964-66 of 2010 decided on May 3, 2010) (2010) 5 SCC, 663** and **Meters and Instruments Private Limited and another Vs. Kanchan Mehta (2018) 1, SCC, 560** to support his contentions.

7. I have heard learned counsel for the parties and have carefully gone through the trial Court record with their able assistance.

8. The only question, which arises for the consideration by this Court, is as to whether the learned appellate Court was justified in allowing the prayer of the respondent/accused for compounding the offence under Section 138 of the Act, even without the consent of the applicant/complainant.

9. The issue relating to compounding of the offence under Section 138 of the Act has been considered by the Hon'ble Supreme Court in various judgments from time to time. The Hon'ble Supreme Court had laid down the guidelines to encourage the litigants in cheque dishonour cases to opt for compounding during various stages of litigation to ease choking of criminal justice system and also have grading scheme of imposing costs on parties, who unduly delay the compounding of the offence in the matter of **Damodar S. Prabhu (supra)** and held as follows:-

“21. 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.

22. Let it also be clarified that any costs imposed in accordance with these guidelines should be deposited with the Legal Services Authority operating at the level of the Court before which compounding takes place. For instance, in case of compounding during the pendency of proceedings before a Magistrate's Court or a Court of Sessions, such costs should be deposited with the District Legal Services Authority. Likewise, costs imposed in

connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with composition before the Supreme Court should be deposited with the National Legal Services Authority”.

10. The issue regarding the permissibility of compounding of offence under Section 138 of the Act on an application filed by the accused alone, in absence of the consent by the complainant, was considered by the Hon’ble Supreme Court in the matter of **Meters and Instruments Private Limited and another (Supra)** and the following ratio was laid down by the Hon’ble Supreme Court, while considering the question as to how the proceedings for an offence under Section 138 of the Act can be regulated, where the accused is willing to deposit the cheque amount but the complainant is opposing the said request:-

“18. From the above discussion following aspects emerge:

***18.1** 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.*

18.2 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.

18.3 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.

18.4 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.

18.5 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.

11. Concerned with the large number of cases filed under Section 138 of the Act pending in different Courts, the Hon'ble Supreme Court decided to examine the reasons for delay in disposal of these cases and the case was captioned as "Expeditious Trial of Cases Under Section 138 of the N.I. Act 1881" in **Suo Motu Writ Petition (Crl.) No. 2 of 2020 decided on 16.04.2021** by a Constitution Bench and held as follows:-

"19. In Meters and Instruments (supra), this Court was of the opinion that Section 143 of the Act confers implied power on the Magistrate to discharge the accused, if the complainant is compensated to the satisfaction of the court. On that analogy, it was held that apart from compounding by the consent of the parties, the Trial Court has the jurisdiction to pass appropriate orders under Section 143 in exercise of its inherent power. Reliance was placed by this Court on Section 258 of the Code to empower the Trial Courts to pass suitable orders.

20. Section 143 of the Act mandates that the provisions of summary trial of the Code shall apply "as far as may

be" to trials of complaints under Section 138. Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint. Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act. The judgment of this Court in Meters and Instruments (supra) in so far as it conferred power on the Trial Court to discharge an accused is not good law. Support taken from the words "as far as may be" in Section 143 of the Act is inappropriate. The words "as far as may be" in Section 143 are used only in respect of applicability of Sections 262 to 265 of the Code and the summary procedure to be followed for trials under Chapter XVII. Conferring power on the court by reading certain words into provisions is impermissible. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation [2] . The Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires [3*] . The court cannot add words to a statute or read words into it which are not there [4*] .*

[2* J. Frankfurter, "Of Law and Men: Papers and Addresses of Felix Frankfurter".

[3* Dupont Steels Ltd. v. Sirs (1980) 1 A ll ER 529 (HL)

[4* Union of India v. Deoki Nandan A gg arwal, 1992 Supp (1) SCC 323

21. A close scrutiny of the judgments of this Court in Adalat Prasad (supra) and Subramaniam Sethuraman

(supra) would show that they do not warrant any reconsideration. The Trial Court cannot be conferred with inherent power either to review or recall the order of issuance of process. As held above, this Court, in its anxiety to cut down delays in the disposal of complaints under Section 138, has applied Section 258 to hold that the Trial Court has the power to discharge the accused even for reasons other than payment of compensation. However, amendment to the Act empowering the Trial Court to reconsider/recall summons may be considered on the recommendation of the Committee constituted by this Court which shall look into this aspect as well.

22. Another submission made by the learned Amici Curiae relates to the power of the Magistrate under Section 322 of the Code, to revisit the order of issue of process if he has no jurisdiction to try the case. We are in agreement with the learned Amici Curiae that in case the Trial Court is informed that it lacks jurisdiction to issue process for complaints under Section 138 of the Act, the proceedings shall be stayed and the case shall be submitted to the Chief Judicial Magistrate or such other Magistrate having jurisdiction.

23. Though we have referred all the other issues which are not decided herein to the Committee appointed by this Court on 10.03.2021, it is necessary to deal with the complaints under Section 138 pending in Appellate Courts, High Courts and in this Court. We are informed by the learned Amici Curiae that cases pending at the appellate stage and before the High Courts and this Court can be settled through mediation. We request the High Courts to identify the pending revisions arising out of complaints filed under Section 138 of the Act and refer them to mediation at the earliest. The Courts before which appeals against judgments in complaints under Section 138 of the Act are pending should be

directed to make an effort to settle the disputes through mediation.

24. The upshot of the above discussion leads us to the following conclusions:

1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

4) We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code. 5) The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

6) Judgments of this Court in Adalat Prasad (supra) and Subramaniam Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of

summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

7) Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters and Instruments (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021. 8) All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee”.

12. From the above, it is apparent that the Constitution Bench of the Hon'ble Supreme Court in the matter of **“Expeditious Trial of Cases Under Section 138 of the N.I. Act 1881”** held that the judgment of Hon'ble Supreme Court in the matter of **Meters and Instruments Private Limited and another (Supra)** in so far as it confers powers on the trial Court to discharge an accused was not a good law. Still further, the Hon'ble Supreme Court held that the procedure prescribed under Section 258 of the Code of Criminal Procedure was not applicable to the trials of complaints under Section 138 of the Act and only to that extent, the judgment of **Meters and Instruments Private Limited and another (Supra)** was set aside. The Hon'ble Supreme Court held that the words **“as far as may be”**

in Section 143 of the Act were used only in respect of applicability of Sections 262 to 265 of Cr.P.C., and the summary procedure as provided under Chapter XVII of the Cr.P.C. was to be followed for holding the trials under Section 138 of the Act. However, the Hon'ble Supreme Court did not deal with the finding in the **Meters and Instruments Private Limited and another (Supra)** to the effect that even though compounding requires consent of both the parties. Still further, in absence of such a consent, the Court, in the interest of justice, on being satisfied that the complainant had been duly compensated, could in its discretion close the proceedings and discharge the accused.

13. Even in a recent judgment titled as **B.V. Seshaiiah Vs. The State of Telangana and another 2023(1) RCR (Criminal) 831,** the law laid down in the matter of **M/s Meters and Instruments Private Limited and another Vs. Kanchan Mehta 2018 (1) SCC 560** was upheld.

14. Now adverting to the facts of the instant case, in the light of the principles laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment passed by the learned appellate Court is liable to be upheld by this Court. It is evident from the record that the accused was always ready and willing to pay the amount to the applicant/complainant in discharge of his liability, since very beginning. Even through letter dated 25.11.2003 (Mark A) the authorized signatory of the company had offered to pay cheque amount and even a demand draft dated 12.09.2004 (Mark B) was also offered. Again a statement was made before the learned appellate

Court on 08.07.2010, where the respondent/accused had offered to pay a sum of Rs. 2 lacs to the complainant in order to compromise the matter. Thus, it can be easily inferred that every stage, the respondent/accused was willing to settle the matter with the applicant.

15. The Negotiable Instruments Act 1881 was amended by The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act 2002 and to make the offence compoundable, special provisions in the shape of Section 147 of the Act was introduced. Even, the intention of Legislature reflects in the statement of objects and reasons, which was attached to the Amendment Act of 2002 is as under:-

"Prefatory Note - Statement of Objects and Reasons. - The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act, 1881, namely, Sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the courts to deal with such matters has been found to be cumbersome. The courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act. ..."

(emphasis supplied)

16. Apart from that, other provisions of law were amended in the Act to meet the requirements of the changing time as well as the deficiencies in the Act pointed out by the Courts. In the instant case, the arguments raised by the learned counsel on both sides centered around the interpretation of Section 147 of the Act, which is as under:-

Section 147

“Offences to be compoundable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.”

17. A reading of Section 147 makes it clear that in view of *non-obstante* clause, the compounding of the offences in the trials held under the provisions of the Negotiable Instruments Act can be permitted only by invoking the provisions of Section 147 of the Act and the provisions enshrined in Section 320 Cr.P.C. would not be applicable in strict sense. In fact, Section 320 Cr.P.C. provides only for compounding of the offences, which are only provided under the Indian Penal code 1860. The intention of the Legislature in introducing the provisions of Section 147 of the Act, which is an enabling provision, was to promote the compounding of offences and should always be taken as an exception to the general law, i.e. Section 320(9) Cr.P.C. Even otherwise, the provisions of Section 147 of the Negotiable Instruments Act was a part of a special statute, which would always prevail over the provisions of general law, i.e. Section 320 Cr.P.C.

18. Even from the perusal of Section 147 of the Act, it is apparent that no specific procedure has been laid down by the statute as to how to proceed with the compounding of the offences under the Act. In absence of a detailed procedure under the statute, this Court would be guided by the various pronouncements made by the Hon'ble Supreme Court from time to time. Since, there was a complete Legislative vacuum in the arena, the Hon'ble Supreme Court laid down certain guidelines/directions to encourage the litigants in the cheque dishonour cases to go for compounding at every stage of litigation, in order to reduce the humongous pendency of cases under the Act. In the matter of **Damodar S. Prabhu (supra)**, the Hon'ble Supreme Court also provided for a graded scheme of imposing costs on the parties, who unduly delayed the compounding of offences as well as for controlling of filing of the complaint in **multiple** jurisdictions relatable to the same transaction. Further, in certain cases, the complainant did not agree with the compromise, the Hon'ble Supreme Court has held in the matter of **Meters and Instruments Private Limited and another (Supra)** that still the Court, in the interest of justice, on being satisfied that the complainant had been duly compensated could in its own discretion close the proceedings and discharge the accused. At every stage, the endeavor of the Court has been to reduce the pendency of such trials under the Act, which are primarily related to civil wrong and the same also evident from the judgment passed by the Constitution Bench of the Hon'ble Supreme Court of India in the matter of **Suo Motu Writ Petition (Crl.) No. 2 of 2020 decided on 16.04.2021** titled as

(Expeditious Trial of Cases Under Section 138 of the N.I. Act 1881).

Even in the said judgment, only a part of the judgment in the matter of **Meters and Instruments Private Limited and another (Supra)** was set aside, which provided for invoking of Section 258 of Cr.P.C. by the trial Court. Rest of the findings, which permitted the closure of the matter, on being satisfied that the complainant had been adequately compensated, were not quashed. Even, recently, in the matter of **B.V. Sessaiah Vs. The State of Telangana and another (supra)**, the Hon'ble Supreme Court reiterated the law laid down in the matter of **Meters and Instruments Private Limited and another (Supra)**.

19. Even otherwise, while discussing the inherent powers of this Court under Article 226 of the Constitution of India and Section 482 Cr.P.C., the Hon'ble Supreme Court held in the matter of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 Supreme Court SC 192** as follows:-

"5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may

possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid aliq̄ue concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiæ to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant

has alleged and whether any offence is made out even if the allegations are accepted in toto”.

20. Coming to the facts of the instant case, it is apparent that the cheque in question was issued by the accused on 07.04.1998. The cheque was presented in the bank and was dishonoured. During the pendency of the matter, through the letter dated 25.11.2003 (Mark-A), the authorized signatory of the company, i.e. respondent/accused had offered to pay the cheque amount and the demand draft dated 12.09.2004 (Mark B) also offered again. In appeal through his statement dated 08.07.2010, the respondent/accused had again offered to pay to the applicant/complainant in order to compromise the matter. However, the prayer was not acceptable to the Management of the applicant/complainant. The matter remained pending for almost 12 years, before it was ordered to be closed by the learned appellate Court by ordering the compounding of the offence subject to the payment of Rs. 3 lacs, i.e. Rs. 2 lacs as cheque amount and Rs. 1 lac as compensation to be paid by the respondent/accused to the applicant/complainant company. This Court agrees with the submissions made by learned counsel for the applicant/complainant that the amount of compensation awarded by the learned appellate Court was on the lower side. Consequently, the respondent/accused is directed to pay a sum of Rs. 4 lacs as compensation to the applicant/complainant and the amount of Rs. 3 lacs as ordered by the appellate Court shall be adjusted in the said amount of compensation. The proceedings under Section 138 of the Act are used more like a means to ensure the payment of money rather than means of seeking retribution. It has been repeatedly held that in the proceedings under

Section 138 of the Act, the compensatory aspect of the remedy has to be given priority over the punitive aspect of the matter. Consequently, the impugned judgment dated 05.08.2010 passed by the Court of learned Additional Sessions Judge, Rewari, is modified to the extent that the amount of compensation is enhanced from Rs. 3 lacs to Rs. 4 lacs and the enhanced amount of Rs. 1 lac shall be paid by the respondent/accused to the applicant/complainant within a period of three months from today, failing which, the judgment dated 18.04.20207 and order of sentence dated 19.04.2007 passed by the Court of learned trial Court shall become operative.

21. In view of the above discussion, it would be appropriate to give quietus to this litigation and the application for leave to appeal is, accordingly, disposed off.

22. All pending applications, if any, are disposed off, accordingly.

23. Records of the Court below be sent back.

02.05.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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