

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-1048-2023

Date of decision: 21.04.2023

M/s Ansal Properties and Infrastructure Ltd.

.....Petitioner

Versus

M/s Valley of Flowers (India) Limited

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Satyaveer Singh, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is impugning the order dated 03.02.2023 passed by learned Judicial Magistrate 1st Class, Kapurthala whereby application filed by the petitioner for compounding of offence was declined in case No.NACT/183/2021 titled as 'M/s Valley of Flowers (India) Ltd. Vs. M/s Ansal Properties & Infrastructure Ltd. and others' under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act').

2. Learned senior counsel appearing on behalf of the petitioner inter alia contends that it was a matter of record that the entire amount of ₹24,99,999/- in respect of the cheques in question, stood transferred in the account of the complainant. The Trial court had thus erred in declining his prayer for compounding of the offence under Section 138 of the NI Act on the ground that the complainant was unwilling to compound the offence. While relying upon *Meters and Instruments (P) Ltd. Vs. Kanchan Mehta : (2018) 1 SCC 560*, learned senior counsel asserts that non-consent of the complainant for

compounding the offence under Section 138 of the NI Act would not come in the way, once the amount equivalent to the negotiable instruments stood paid.

3. I have heard learned counsel and perused the relevant material on record.

4. No doubt, it has been vehemently argued by the learned senior counsel that the petitioner has transferred the entire amount in dispute to the complainant, however, a perusal of the reply of the complainant (Annexure P-3), to the application for compounding of the offence reveals that it has disputed the factum of having received the entire amount due towards him.

5. The Hon'ble Supreme Court in *Kanchan Mehta's case (supra)*, has no doubt held that an offence under Section 138 of the NI Act can be compounded even in the absence of the consent of the complainant, however, the same would be subject to the satisfaction of the Trial Court, that the accused has paid the entire cheque amount along with the costs and interest as assessed by it. In the instant case, from a perusal of the material on record it reveals that the complainant has opposed the compounding of the offence under Section 138 of the NI Act on the ground that the petitioner has not paid the entire amount in question along with the cost and interest on the same. Admittedly, there are disputed questions of fact involved with respect to the amount payable to the complainant. In the circumstances, the Trial Court cannot be faulted with for declining the prayer of the petitioner for compounding the offence.

6. At this stage, learned senior counsel submits that the

petitioner is still ready to appear and pay the amount equivalent to the negotiable instruments along with the costs and interests as may be assessed by the Trial Court. He thus prays for issuance of directions to the Trial Court to assess the total amount payable by the petitioner to the respondent/complainant in the light of the following directions detailed in the summons which were sent to it vide Annexure P-4:

“At the earliest after receiving this notice, you may make payment to the complainant for amount equivalent to negotiable installments, in his account, provided, if any, or, in court at the earliest, along with costs, if any assessed by court.”

7. In the light of the prayer made by the learned senior counsel, this petition is disposed of with liberty to the petitioner to appear and move an application before the Trial Court to assess the total amount payable to the respondent/complainant expeditiously, in accordance with law.

8. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

21.04.2023

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(MANJARI NEHRU KAUL)
JUDGE

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