**IN THE HIGH COURT OF PUNJAB AND HARYANA**
**AT CHANDIGARH**

**CRM-M-20870-2023**
**Date of Decision : 12.05.2023**

Sarda Alloys Pvt. Ltd. And others ...... Petitioners

Versus

Bansal Alloys & Metal Pvt. Ltd. ...... Respondent

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

***

Present : Mr. Mayur Kanwar, Advocate
for the petitioners.

***

**VIKRAM AGGARWAL, J**

1. The present petition, preferred under Section 482 Cr.P.C., assails the order dated 14.02.2023 (Annexure P-1), passed by the Sessions Judge, Fatehgarh Sahib, vide which the criminal revision filed by the petitioners against the order dated 14.11.2022 (Annexure P-4) was dismissed.

2. The respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act') read with Section 420 IPC against the present petitioners on account of dishonour of a cheque amounting to Rs.20,368/-. During the pendency of the complaint, the petitioners moved an application dated 02.06.2022 (Annexure P-3) for compounding of the offence and for consequential discharge of the petitioners. It was the stand of the petitioners that without going into the merits of the case, they were ready to deposit the cheque amount. Reply to the said application was filed but vide order dated 14.11.2022 (Annexure P-

4), the trial Court dismissed the application. A revision petition challenging this decision was preferred which was dismissed vide judgment dated 14.02.2023 (Annexure P-1), leading to the filing of the present petition.

3. Learned counsel for the petitioners has submitted that both the Courts below erred in dismissing the application for compounding the offence as well as the revision petition filed by the petitioners. It has been submitted that when the petitioners were willing to pay the entire cheque amount alongwith interest etc., as determined by the Court, there was no occasion for the Court to reject the same. Reliance has been placed upon the judgment of Hon'ble Supreme Court in ***M/s Meters and Instruments Private Limited & Anr. versus Kanchan Mehta 2017 AIR (SC) 4594***.

4. I have considered the submissions made by learned counsel for the parties.

5. Section 147 of the N.I.Act states that every offence punishable under the N.I.Act shall be compoundable. This provision was interpreted by the Hon'ble Supreme Court of India in the case of ***JIK Industries Limited & Ors. vs. Amarlal V. Jumani and Another 2012 (1) R.C.R. (Criminal) 822*** wherein it was held by the Hon'ble Apex Court that the offences under the N.I.Act have been made compoundable but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor the same can be substituted by virtue of Section 147 of the N.I.Act. While holding so, the Hon'ble Supreme Court of India laid down as under:-

> *"73. In our country also when the Criminal Procedure Code, 1861 was enacted it was silent about the compounding of*

*offence. Subsequently, when the next Code of 1872 was introduced it mentioned about compounding in Section 188 by providing the mode of compounding. However, it did not contain any provision declaring what offences were compoundable. The decision as to what offences were compoundable was governed by reference to the exception to Section 214 of the Indian Penal Code. The subsequent Code of 1898 provided Section 345 indicating the offences which were compoundable but the said Section was only made applicable to compounding of offences defined and permissible under Indian Penal code. The present Code, which repealed the 1898 Code, contains Section 320 containing comprehensive provisions for compounding. A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a Code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of section 147 in the Negotiable Instruments Act, the entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence under the Negotiable Instruments Act, in that case the compounding of offence under Negotiable Instruments Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under Negotiable Instruments Act. Therefore, Section 147 of the Negotiable Instruments Act must be reasonably construed to mean that as a result of the said Section the offences under Negotiable Instruments Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant* *cannot be wished away nor can the same be substituted by virtue of Section 147 of Negotiable Instruments Act.*

6. After this judgment, another judgment of the Hon'ble Apex Court in ***M/s Meters and Instruments Private Limited's case*** (supra) came wherein it was held that if the cheque amount with interest and costs, as assessed by the Court, is paid by a specfied date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the N.I.Act read with Section 258 Cr.P.C. Para 19 of the said judgment lays down as under:-

> "19. In view of the above, we hold that where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 Cr.P.C. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under Section 357(3) Cr.P.C. with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances."

7. A Coordinate Bench of this Court was also faced with a similar situation in the case of ***M/s Anant Tools (Unit No.II) Pvt. Ltd. and others versus M/s Anant Tools Pvt. Ltd., Jalandhar 2019 (1) R.C.R. (Criminal) 137*** and while relying upon the judgments of the Hon'ble Apex Court in the cases of ***M/s Meters and Instruments Private Limited*** (supra) and ***JIK Industries Limited & Ors.*** (supra), it was held that where there was no consent of the

complainant for compounding, it was impermissible for the Court to permit compounding merely on a unilateral application moved by the accused.

8. Reverting to the facts of the present case, the complaint was filed for dishonour of a cheque amounting to Rs.20,368. The complaint (Annexure P-2) also mentioned that a sum of Rs.23,14,767/- was recoverable from the present petitioner as on 31.03.2021 as also at the time of the filing of the complaint. Paragraph 10 of the complaint also mentioned that the present petitioners had issued other cheques also to clear their liability in part but the same had also been dishonoured and complaints were being filed regarding those cheques also against the accused-petitioners. An application for compounding of the offence was moved by the petitioners stating that they were ready to pay the cheque amount. This application was contested by the respondent-complainant. The trial Court dismissed this application by relying upon the judgments of this Court in ***M/s Anant Tools's Pvt. Ltd.'s case*** (supra) and held that since the consent of the respondent-complainant was not there, the application could not be allowed. The same view was taken by the Sessions Judge, Fatehgarh Sahib while dismissing the revision petition filed by the petitioners. I do not find any infirmity in these decisions. First of all, the judgment in ***JIK Industries Limited's case*** (supra) clearly lays down that without the consent of the complainant, the offence cannot be compunded. Even in the case of ***M/s Meters and Instruments Private Limited*** (supra), the Hon'ble Apex Court has held that the Court is entitled to close the proceedings and it nowhere lays down that even on a unilateral application of the accused and without the consent of the complainant, the offence can be compounded. In any case, relying upon the observations of the Hon'ble Apex

Court in the case of ***National Insurance Company Limited vs. Pranay Sethi, 2017 (4) RCR (Civil) 1009***, a Coordinate Bench of this Court relied upon the judgment of the Hon'ble Apex Court in ***JIK Industries Limited's case*** (supra) and held that without the consent of the complainant, a request for compounding cannot be accepted. I am in agreement with this view taken by the Coordinate Bench in the case of ***M/s Anant Tools's Pvt. Ltd.'s case*** (supra). Another fact which deserves to be mentioned is that here the conduct of the petitioners would also become relevant because the petitioners, as per the respondent-complainant owed a sum of Rs.23,14,767/- and had issued various cheques which were dishonoured. It is not the case of the petitioners that they have moved similar applications in all cases nor any reference has been made during the course of arguments to the other cases and, the petitioners, moved the application for compounding the offence in the present case apparently because of the amount involved being meagre. Infact, their own application also makes a mention that the amount being meagre, they were wanting to settle the matter. In any case, in view of the law on the subject, without consent of the complainant, compounding cannot be permitted.

In view of the above, I do not find any merit in the present petition and the same is hereby dismissed.

**(VIKRAM AGGARWAL)**
**JUDGE**

**12.05.2023**
mamta

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No