

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1203-2022 (O&M)

Date of Decision: 01.02.2023

M/S SWASTIC PHARMA

... Petitioner

Versus

M/S DHANWANTRI AYURVEDIC SANSTHAN

...Respondent

CRR-1206-2022 (O&M)

M/S SWASTIC PHARMA

... Petitioner

Versus

M/S DHANWANTRI AYURVEDIC SANSTHAN

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. D.K. Tuteja, Advocate
for the petitioner(s).

None for the respondent(s).

JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing No. CRR-1203-2022 titled as M/s Swastic Pharma Versus Dhanwantri Ayurvedic Sansthan and CRR-1206-2022 titled as M/s Swastic Pharma Versus Dhanwantri Ayurvedic Sansthan. For the sake of convenience, the facts are being taken from CRR-1203-2022 as both these petitions are arising out of the same complaint.

2. The instant revision petitions have been filed against the judgment dated 03.02.2020 passed by the Additional Sessions Judge, Hisar, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 08.07.2015 passed by the learned Judicial Magistrate, 1st Class, Hisar Sahib, has been dismissed and the appeal preferred by the complainant/respondent for enhancement of sentence and compensation have been allowed.

3. The brief facts of the case are that the accused/petitioner has been dealing in the purchase of Ayurvedic Medicines from the complainant. It has been further averred that in order to discharge his liability, the accused/petitioner issued two cheques bearing No.694154 dated 11.10.2012 for a sum of Rs.20,000/- and another cheque bearing No.694156 dated 15.10.2012 for a sum of Rs.11,580/- drawn on State Bank of Patiala, Jind in favour of the complainant, with the assurance that the same will be honoured as and when presented with the Bank. However, the cheques in question on its presentation, by the complainant in his bank account with Punjab National Bank, Hisar got dishonoured from the drawer's bank with the remarks "funds insufficient" vide bank return memo dated 19.10.2012 and the complainant received the information on 05.11.2012. Thereafter, the complainant sent a registered legal notice to the accused/petitioner but the drawer failed to make the due payment within the stipulated period of 15 days despite receipt of the legal notice dated 08.11.2012.

4. Thereafter, a complaint under Section 138 of the Negotiable Instruments Act, 1881, was filed, where the petitioner/accused was

summoned to face the trial. The evidence was led and ultimately, he was held guilty and accordingly, convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to undergo simple imprisonment for a period of 06 months and was also ordered to pay the compensation of both the cheque amount i.e. Rs.20,000/- + Rs.11,580/- = Rs.31,580 to the complainant. In default of payment of compensation amount, the accused/petitioner was to undergo simple imprisonment for a period of 03 months.

5. Aggrieved against the said judgment of conviction and order of sentence, the petitioner/accused preferred an appeal before the Additional Sessions Judge, Hisar.

The complainant/respondent also preferred an appeal for enhancement of sentence and compensation amount. Both the appeals were decided vide a common judgment dated 03.02.2020. While the appeal of the petitioner was dismissed, in the appeal of the complainant, the sentence was modified and the petitioner was ordered to pay double of the cheque amount vide common judgment dated 03.02.2020.

6. Still aggrieved, the instant petitions came to be filed by the petitioner before this Court.

7. During the course of proceedings, on 07.09.2022, the following order was passed:-

CRM-33047-2022

The application for placing on record a copy of the order dated 02.09.2022 passed by the Court of the JMIC, Hisar (Annexure P-1) is allowed as prayed for. The said

order is taken on record. The Registry is directed to tag the same at the appropriate place of the paper-book.

CRR-1203-2022 (O & M)
and CRR-1206-2022 (O & M)

The learned counsel for the petitioner contends that the total amount payable is Rs.31,580/- and the petitioner is ready and willing to pay double the aforesaid amount. He contends that, in that regard, he has brought a demand draft bearing No.042561 dated 21.01.2022 for a sum of Rs.63,160/- in the name of the respondent in the Court today. A copy thereof is taken on record as Mark 'A'.

Notice of motion for 14.09.2022.

Process dasti as well.

In the meantime, the petitioner is ordered to be released on interim bail to the satisfaction of the Trial Court.

To be shown in the Urgent list.

A photocopy of this order be placed on the file of the connected case."

Thereafter, on 14.09.2022, the following order was passed:-

"According to the report from the Registry, notice issued to the respondent has not been received back served or otherwise.

Let fresh notice to the respondent be issued for 23.11.2022.

Dasti as well.

Interim order to continue.

A photocopy of this order be placed on the file of the connected case."

Thereafter, on 23.11.2022, the following order was passed:-

“The learned counsel for the petitioner(s) has handed over a cheque of Rs.63,160/- vide cheque No.042561 dated 12.09.2022.

The parties are ad idem that a settlement has been effected between themselves.

The parties are at liberty to move an application under Section 147 of the Negotiable Instruments Act for the purposes of complaining of the offences.

Adjourned to 23.01.2023.

Interim order to continue.

A photocopy of this order be placed on the files of other connected matters.”

Then on 05.01.2023, the following order was passed:-

“CRM-50238-2022

The prayer in the application under Section 147 of the Negotiable Instruments Act read with Section 482 Cr.PC for compounding the offence under Section 138 of the Negotiable Instruments Act.

Notice in the application for the date already fixed i.e. 23.01.2023.”

Then on 23.01.2023, the following order was passed:-

“On request of the learned counsel for the petitioner, adjourned to 24.01.2023.

To be shown in the Urgent Cause List at Sr. No.101.

A photocopy of this order be placed on the file of the connected case.”

8. The learned counsel for the petitioner contends that the cheque amount was Rs.31,580/- and the petitioner has paid a total amount of Rs.63,160/- as was borne out from the interim order of this Court dated 23.11.2022. Despite having undertaken to move an application for

compounding, the respondent refused to sign the application even though double the cheque amount already stands paid. He thus, contends that the conduct of the respondent/complainant amounts to contempt and action should be initiated against him along with the quashing of the present proceedings by invoking the inherent powers of this Court under Section 482 Cr.P.C.

9. I have heard the learned counsel for the petitioner.

10. The short question before this Court is as to whether proceedings under the Negotiable Instruments Act can be quashed/compounded after the complainant has accepted double the cheque amount, agreed to compound the offence under Section 147 of the Negotiable Instruments Act and thereafter, backs out from the settlement.

11. In this context, the Hon'ble Supreme Court in the case of **M/s Meters and Instruments Private Limited & another Versus Kanchan Mehta, 2017(4) RCR (Criminal) 476**, held as under:-

“18. From the above discussion following aspects emerge:

i) 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.

ii) *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.*

iii) *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.*

iv) *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 IPC 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.*

v) *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 dishonor 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.

(emphasis supplied)

In the case of **M/s Nidhi Knitwears (P) Ltd. & another Versus Honey Hosiery Mills, CRM-M-13193-2018, decided on 05.05.2022**, the question was as to whether compounding under Section 147 of the Negotiable Instruments Act could take place without the consent of the complainant even though the accused was unilaterally willing to make the appropriate payment to the complainant. The relevant para of the said judgment held as under:-

11. The contention of the learned counsel for the petitioners-accused that the judgment in Damodar S. Prabhu (supra) was also to this effect that a compromise can be effected without the consent of all the parties, and that Section 320 Cr.P.C. has no application, is fallacious. This judgment proceeds primarily on the assumption that there was a consent between the parties. The dispute, in this case, was only the stage at which the parties can appropriately be allowed to compound the offence. In JIK Industries' case (supra), however, the precise issue was as to whether the consent of the parties was necessary to compound the offence and it was held that the basic mode and manner of effecting the compounding of an offence under Section 320 Cr.P.C. cannot be said to be not attracted in case compounding of offence under Section 147 of the Negotiable Instruments Act. In fact Section 320 Cr.P.C. enumerates the manner in which the offences are to be compounded whereas Section 147 of the Act makes the offences under the Act compoundable without explaining the manner in which the compounding is to take place. Even in

Para 18(iii) of the judgment in M/s Meters and Instruments' case (supra), the Court has stated that though compounding requires the consent of both the parties, even in the absence of such consent, the Court in the interest of justice can, in its discretion, close the proceedings. This effectively means that compounding requires consent but quashing does not. Therefore, even as per M/s Meters and Instruments (supra), the accused cannot as a matter of right claim that a settlement should be effected because he is unilaterally willing to make the good the payment. Of course, the Court in its discretion, may quash such proceedings if it feels that the claim of the complainant is satisfied and he has been adequately compensated.

(emphasis supplied)

Thus, it is apparent that even if the complainant refuses to compromise and compound the offence, the Court can close proceedings, where it feels that the complainant has been adequately compensated.

12. As to whether proceedings could be quashed post-conviction, the Hon'ble Supreme Court, in the case of **Ramgopal & another Versus State of Madhya Pradesh, 2021(4) R.C.R. (Criminal) 322**, held as under:-

“11. True it is that offences which are 'non-compoundable' cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C., 1973 Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C., 1973 which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., 1973 which may justify its wider interpretation and include such offences in the docket of 'compoundable' offences which have been consciously kept out as non-compoundable.

Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C., 1973 is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C., 1973. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C., 1973 in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., 1973 even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are pre-dominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post-conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness

of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C., 1973 would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C., 1973 may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in Narinder Singh & Ors. v. State of Punjab & Ors., (2014) 6 SCC 466 and Laxmi Narayan (Supra).

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a 'settlement' through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

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18. It is now a well crystalized axiom that the plenary jurisdiction of this Court to impart complete justice under [Article 142](#) cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to [Section](#)

482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under [Article 142](#) of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sub-lime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

19. We thus sum-up and hold that as opposed to [Section 320 Cr.P.C.](#) where the Court is squarely guided by the compromise between the parties in respect of offences ‘compoundable’ within the statutory framework, the extraordinary power enjoined upon a High Court under [Section 482 Cr.P.C.](#) or vested in this Court under [Article 142](#) of the Constitution, can be invoked beyond the metes and bounds of [Section 320 Cr.P.C.](#) Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; & (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.”

(emphasis supplied)

Thus, it is apparent that the Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. can quash proceedings including

judgments of conviction in the interest of justice through only where a compromise has been arrived at in offences pre-dominantly private in nature.

13. As to the fate of a criminal proceeding where a compromise is arrived at, given effect to, but subsequently the complainant reneges from the same, the Hon'ble Supreme Court held as under:-

In **Ruchi Agarwal Versus Amit Kumar Agrawal, 2004(4)**

R.C.R. (Criminal) 949, it was held as under:-

“5. From the above narrated facts, it is clear that in the compromise petition filed before the Family Court, the appellant admitted that she has received Stridhan and maintenance in lump sum and that she will not be entitled to maintenance of any kind in future. She also undertook to withdraw all proceedings civil and criminal filed and initiated by her against the respondents within one month of the compromise deed which included the complaint under sections 498A, 323 and 506 Indian Penal Code and under Sections 3 and 4 of Dowry Prohibition Act from which complaint this appeal arises. In the said compromise, the respondent-husband agreed to withdraw his petition filed under Section 9 of the Hindu Marriage Act pending before the Senior Judge, Civil Division, Rampur and also agreed to give a consent divorce as sought for by the appellant.

6. It is based on the said compromise the appellant obtained a divorce as desired by her under Section 13B of the Hindu Marriage Act and in partial compliance of the terms of the compromise she withdrew the criminal case filed under Section 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground

of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.

7. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the above-mentioned terms in it, the same was obtained by the respondent-husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her Stridhan properties, we find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent-husband has given her a consent divorce which she wanted thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 Criminal Procedure Code proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

8. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this

appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash proceedings arising from the Criminal Case No. Cr. No. 224/2003 registered in Police Station, Bilaspur, (Distt. Rampur) filed under sections 498A, 323 and 506 Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of.

In **Mohd. Shamim Versus Smt. Nahid Begum, 2005(1) R.C.R.**

(Criminal) 697, it was held as under:-

10. Before us, there is no denial or dispute as regard the factum of entering into the aforementioned settlement dated 14.11.2002. In the said deed of compromise it has categorically been averred that the same had been entered into on the intervention of S.N. Gupta, Additional Sessions Judge, Delhi. It has also been accepted that out of sum of Rs.2,75,000/-, a sum of Rs.2,25,000/- has been paid to the First Respondent herein and the balance amount of Rs.50,000/- would be paid at the time of complainant's making statement and no objection for quashing the FIR, which was retained in the court as per the direction of the court. It has further been averred that no dispute remained between the parties regarding the payment of dower amount (Mehar), dowry articles, including the alleged jewellery gift etc.

11. In view of the fact that the settlement was arrived at the intervention of a judicial officer of the rank of the Additional Sessions Judge, we are of the opinion, the contention of the First Respondent herein to the effect that she was not aware of the contents thereof and the said agreement as also the affidavit which were got signed by her by misrepresentation

of facts must be rejected. In the facts and circumstances of this case, we have no doubt in our mind that the denial of execution of the said deed of settlement is an afterthought on the part of the Respondent No.1 herein.

12. Ex facie the settlement between the parties appears to be genuine. If the contention of the First Respondent herein is to be accepted, she would not have accepted the sum of Rs.2,25,000/- and in any event, she could have filed an appropriate application in that behalf before the Court of S.N. Gupta, Additional Sessions Judge, Delhi. What was least expected of her was that she would return the said sum of Rs.2,25,000/- to the Appellants herein.

13. [Section 406](#) is a compoundable offence with the permission of the court. It is true that [Section 498-A IPC](#) is not compoundable.

14. This Court in [Ruchi Agarwal vs. Amit Kumar Agrawal & Ors.](#) 2004(4) RCR (Criminal) 949 (SC) : [2004 (8) Supreme 525], in almost a similar situation has quashed a criminal proceeding against the husband, stating :

"Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

8. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue"

15. In view of the conduct of the First Respondent in entering into the aforementioned settlement, the continuance

of the criminal proceeding pending against the Appellants, in our opinion, in this case also, would be an abuse of the process of the court. The Appellant No.1, however, would be entitled to withdraw the sum of Rs.50,000/- which has been deposited in the court. We, therefore, in exercise of our jurisdiction under [Article 142](#) of the Constitution of India direct that the impugned judgment be set aside. The First Information Report lodged against the Appellants is quashed. The Appeal is allowed. However, this order should not be treated as a precedent.”

(emphasis supplied)

The aforesaid judgments have been relied upon in the cases of **Ram Lal & others Versus State of Haryana & another, 2008(2) R.C.R. (Criminal) 823, Raj Kumar & others Versus State of Punjab & another, 2016(1) R.C.R. (Criminal) 60, Nishan Singh Versus State of Punjab & another, 2018(4) Law Herald 3393, Krishan Singh & others Versus State of Punjab & another, 2020(4) R.C.R. (Criminal) 327 and Shri Arun Atmaram Patil Versus Sandhya Arun Patil & others, 2016(2) R.C.R. (Criminal) 336.**

14. In the present case, the Trial Court convicted the petitioner and the judgment of conviction was upheld by the Court Additional Sessions Judge, Hisar and compensation was enhanced. Subsequent thereto, when the instant revision petitions came to be filed, double of the cheque amount (as per the judgment of the Additional Sessions Judge, Hisar) was accepted by the complainant in terms of a settlement recorded vide order dated 23.11.2022 and it was agreed that an application under Section 147 of the Negotiable Instrument Act for compounding of the offences shall be moved. However, for reasons unknown, the complainant has reneged from the

compromise. Surprisingly, not only does the complainant choose not to appear but his counsel too has chosen not to appear in Court despite this matter having been adjourned on two earlier occasions i.e. 05.01.2023 and 23.01.2023. This conduct is reprehensible to say the least.

15. In view of the above discussion, since in the opinion of this Court, the complainant/respondent has been adequately compensated, therefore, despite the fact that the complainant/respondent has not agreed to compounding of the offence, the judgment dated 03.02.2020 passed by the Additional Sessions Judge, Hisar and the judgment of conviction and order of sentence dated 08.07.2015 passed by the learned Judicial Magistrate, 1st Class, Hisar, are hereby set aside and all proceedings against the petitioner stand quashed.

16. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

01.02.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No