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

**CRR-4525-2017
DECIDED ON: 03.03.2023**

M/S JAI LUXMI INDUSTRIES AND ANOTHER

.....PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Ms. Rajvinder Kaur, Advocate
for the petitioners.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

The instant Revision Petition came to be filed against the judgment dated 30.01.2017 and 02.02.2017 passed by Judicial Magistrate First Class, Ambala in a complaint No.695 of 2014 under Section 138 of Negotiable Instrument Act, 1881.

The petitioner was convicted by the Judicial Magistrate First Class, Ambala for a period of six months to undergo simple imprisonment and to pay Rs.5,74,500/- to the complainant-respondent. The said judgment was subsequently upheld by the Additional Sessions Judge, Ambala in an appeal preferred by the petitioner and vide judgment dated 15.11.2017 which has also been assailed in the present Revision Petition.

Ms. Rajvinder Kaur, learned counsel for the petitioner contended that the said cheques were never issued by the petitioner and the same also do not bear his signatures-accused No.3 while referring to the deposition of CW-1

Mohinder Singh who categorically stated that the petitioner-accused never handed over the cheque to the complainant.

The explanation given before this Court by the petitioner on the allegations against him is that the petitioner No.2 is authorized signatory of M/S Jai Luxmi Industries, Village Jaguri Bainsi, Tehsil Radour, District Yamunanagar. It is also stated that the petitioner along with co-accused namely Raj Kumar issued three cheques amounting to Rs.1.5 lakhs, Rs.1.00 lakh and Rs.1.33 lakhs respectively from the account of the aforesaid M/S Jai Luxmi Industries pertaining to Punjab National Bank. The said cheques are alleged to have been presented to HDFC bank which were returned with their remarks “exceeds arrangement”.

The counsel for the petitioner has asserted that from the very beginning it is her case that the cheques were neither issued by her nor these cheques bear the signatures of petitioner No.2-accused whereas it is M/S Gagan Coal Company, Ambala made false and fabricated bills, invoice for the firm M/s Jai Luxmi Industries to extract money though all such dues and accounts stand cleared and there was no legal debt/liability left out and as such there was no question of issuing the cheques in dispute. It has been further contended that in fact Ambika Goods Carrier Transport at Ambala is a fake transport, the proprietor of which has been joined in the name of Mohinder Singh-complainant who created false bills, invoice.

The submissions were concluded urging that the trial Court critically erred in law while ignoring the fact that the complainant-respondent No.2 has failed to prove any transaction for which the cheques alleged to have been issued and challenged the judgment of conviction dated 30.01.2017 along with the order dated 02.02.2017 passed in appeal upholding the conviction of the petitioners by way of present Revision Petition before this Court.

It is during the pendency of present petition, an application came to be filed before this Court for compounding of the offence on the basis of a compromise entered into between the parties.

This Court vide order dated 19.12.2022 considering the statements made by the counsels for respective parties that the matter has been compromised at Rs.3,83,000/- on account of all the three cheques directed the parties to make a statement with regard to the compromise before the Judicial Magistrate First Class, Ambala within a period of two months who was asked to submit a report to this Court on the following issues:-

- (i) Number of persons arrayed as accused in the FIR;
- (ii) Whether any accused is declared as proclaimed offender;
- (iii) Whether the compromise is genuine, voluntary and without any coercion or undue influence;
- (iv) Whether the accused persons are involved in any other FIR or not.

In pursuance thereof the parties were appeared before the Judicial Magistrate First Class, Ambala on 02.01.2023 and apart from submitting an affidavit got the statements recorded.

The report dated 21.01.2023 has been received by this Court from the office of District and Sessions Judge, Ambala stating that both the parties i.e. complainant-respondent No.2 namely Mohinder Singh and petitioner-accused namely Sarvjeet Kaur appeared before this Court. Both of them were asked that whether the compromise has been arrived between them with their free consent or not. In this regard, they have got recorded their separate statements duly identified by their respective counsels to the effect that the matter has been compromised between them out of their own free will and without any threat, pressure, coercion or undue influence and the complainant has stated that he has no objection if the present complaint is quashed.

Further report has also been submitted that:-

(i)	Number of persons arrayed as accused in the FIR.	In this regard, it is submitted that the present case registered under Section 138 of N.I. Act and the present complaint was filed by the complainant M/s Gagan Coal Company through its sole proprietor Shri Mohinder Singh (respondent No.2) against accused No.1 M/s Jai Luxmi Industries and against accused No.2 Raj Kumar, accused No.3 Sarvjeet Kaur (petitioner), accused No.4 Baldev and accused No.5 Ajay Sadana, all partners of M/s Jai Luxmi Industries. Note:- It is pertinent to mention that the vide judgment dated 30.01.2017 and order of sentence dated 02.02.2017 passed by the Court of Shri Sachin Yadav, the then learned Judicial Magistrate First Class, Ambala only accused No.1 M/s Jai Luxmi Industries and accused No.3 Sarvjeet Kaur⁴ were convicted and the other accused namely accused No.2 Raj Kumar accused No.4 Baldev and accused no.5 Ajay Sadana were acquitted.
(ii)	Whether any accused is declared as proclaimed offender?	As per the statement and affidavit filed by the petitioner/accused No.3 Sarvjeet Kaur, she and her firm M/s Jai Luxmi Industries i.e. accused No.1 have never been declared as proclaimed offenders in the present complaint or in any other case through out India by any Court of law.
(iii)	Whether the compromise is genuine, voluntary and without any coercion or undue influence?	Both the parties i.e. complainant/respondent No.2 Mohinder Singh and petitioner/accused Sarvjeet Kaur have admitted that the compromise has been effected between them out of their free will and without any threat, pressure or undue influence and the compromise appears to be genuine and voluntary, I am satisfied that the compromise has been arrived at with the free consent of the parties and without any threat, pressure, undue influence or coercion from any side.

(iv)	Whether the accused persons are involved in any other FIR or not?	As per statement and affidavit filed by petitioner/accused No.3 Sarvjeet Kaur, except the present complaint, no other FIR is pending or registered against her in any police station through out India.
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Before reaching to conclusion as to whether offence can be compounded at this stage, during pendency of instant Revision Petition once the petitioners have been convicted by the trial Court as has been upheld by the Lower Appellate Court as well, a glance of Section 147 of the Negotiable Instruments Act, 1881 would be appetite which reads as under:-

Section 147 provides for a non obstante clause, stating:

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.

It would suffice to say that parties were involved in commercial transactions and that disputes had arisen on account of three cheques issued by the petitioners and on that account, the parties already went through several stages of litigation before reaching to this Court by way of Criminal Revision Petition. Now the petitioners have prayed for compounding of the offence under Section 138 of N.I. Act, 1881 relying upon the consent terms as recorded before the Judicial Magistrate First Class, Ambala on the directions of this Court to which the respondents have not opposed.

However, there are some larger issues which can be appropriately addressed in the context of the present case. It may be recalled that Chapter XVII comprising sections 138 to 142 was inserted into the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988). The object of bringing Section 138 into the statute was to inculcate faith in efficacy of banking operations and credibility

in transacting business on negotiable instruments. It was to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers. If the cheque is dishonoured for insufficiency of funds in the drawer's account or if it exceeds the amount arranged to be paid from that account, the drawer is to be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

It needs be noted here that when the offence was inserted in the statute in 1988, it carried the provision for imprisonment up to one year, which was revised to two years following the amendment to the Act in 2002. It is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a 'fine which may extent to twice the amount of the cheque' serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions. Invariably, the provision of a strong criminal remedy has encouraged the institution of a large number of cases that are relatable to the offence contemplated by Section 138 of the Act. So much so, that at present a disproportionately large number of cases involving the dishonour of cheques is choking our criminal justice system, especially at the level of Magistrates' Courts. As per the 213th Report of the Law Commission of India, more than 38 lakh cheque bouncing cases were pending before various

courts in the country as of October 2008. This is putting an unprecedented strain on our judicial system.

Even before the insertion of Section 147 in the Act (by way of an amendment in 2002) some high Courts had permitted the compounding of the offence contemplated by Section 138 during the later stages of litigation. In fact in '**O.P. Dholakia v. State of Haryana**', (2000) 1 SCC 672, the Hon'ble Supreme Court had permitted the compounding of the offence even though the petitioner's conviction had been upheld by all the three designated forums. After noting that the petitioner had already entered into a compromise with the complainant, the bench had rejected the state's argument that this Court need not interfere with the conviction and sentence since it was open to the parties to enter into a compromise at an earlier stage and that they had not done so. The bench had observed:-

"... Taking into consideration the nature of the offence in question and the fact that the complainant and the accused have already entered into a compromise, we think it appropriate to grant permission in the peculiar facts and circumstances of the present case, to compound."

Similar reliefs were granted in orders reported as '**Sivasankaran v. State of Kerala & Anr.**' (2002) 8 SCC 164, '**Kishore Kumar v. J.K. Corporation Ltd.**', (2004) 12 SCC 494 and '**Sailesh Shyam Parskar v. Baban**', (2005) 4 SCC 162, among other cases.

As mentioned above, the Negotiable Instruments Act, 1881 was amended by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 which inserted a specific provision, i.e. Section 147 'to make the offences under the Act compoundable'. A reference can be made to the following extract

from the Statement of Objects and Reasons attached to the 2002 amendment which is self-explanatory:-

"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...."

In order to address the deficiencies referred to above, Section 10 of the 2002 amendment inserted Sections 143, 144, 145, 146 and 147 into the Act, which deal with aspects such as the power of the Court to try cases summarily (Section 143), Mode of service of summons (Section 144), Evidence on affidavit (Section 145), Bank's slip to be considered as prima facie evidence of certain facts (Section 146) and Offences under the Act to be compoundable (Section 147). At present, I am of course concerned with Section 147 of the Act, which reads as follows:-

"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."

At this point, it would be apt to clarify that in view of the non-obstante clause. the compounding of offences under the Negotiable Instruments Act, 1881 is controlled by Section 147 and the scheme contemplated by Section 320 of the Code of Criminal Procedure [Hereinafter CrPC'] will not be applicable in the strict sense since the latter is meant for the specified offences under the Indian Penal Code.

So far as the Cr.P.C is concerned. Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the Court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the Court, while sub- section (2) of the said section specifies the offences which are compoundable with the leave of the Court.

After above deliberation, it can be easily summarized that the Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-section (9) of Section 320 of the Cr.P.C which states that 'No offence shall be compounded except as provided by this Section'. A bare reading of this provision would lead this Court to the inference that offences punishable under laws other than the Indian Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) of the Cr.P.C, especially keeping in mind that Section 147 carries a non-obstante clause.

In '*Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.*', (2008) 2 SCC 305, the Apex Court had examined whether an offence punishable under Section 138 of the Act which is a special law can be compounded'. After taking

note of a divergence of views in past decisions, the following position was taken (C.K. Thakker, J. at Para. 17):-

“...This provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realised this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002)...”

In the same decision, the court had also noted (Para. 11):-

"... Certain offences are very serious in which compromise or settlement is not permissible. Some other offences, on the other hand, are not so serious and the law may allow the parties to settle them by entering into a compromise. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to an act as an inducement for his abstaining from proceeding further with the case."

It would also be pertinent to refer to Supreme Court's decision in '**R. Rajeshwari v. H.N. Jagadish**', (2008) 4 SCC 82, wherein the following observations were made (S.B. Sinha, J. at Para. 12):-*"Negotiable Instruments Act is a special Act. Section 147 provides for a non obstante clause, stating:*

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.

Indisputably, the provisions of the Code of Criminal Procedure, 1973 would be applicable to the proceedings pending before the courts for trial of offences under the said Act. *Stricto sensu*, however, the table appended to Section 320 of

the Code of Criminal Procedure is not attracted as the provisions mentioned therein refer only to provisions of the Penal Code and none other."

The compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible in a recent decision of this Court, reported as K.M. Ibrahim v. K.P. Mohammed & Anr., 2009 (14) SCALE 262, wherein Kabir, J. has noted (at Paras. 11, 12):-

"11. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences.

12.It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, I find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 130 of the Constitution".

It is quite obvious that with the respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. One explanation for such behaviour could be that the accused persons are willing to take the chance of progressing through the various stages of litigation and then choose the route of settlement only when no other route remains. While such behaviour may be viewed as rational from the viewpoint of litigants, the hard facts are that the undue delay in opting for compounding contributes to the

arrears pending before the courts at various levels. If the accused is willing to settle or compromise by way of compounding of the offence at a later stage of litigation, it is generally indicative of some merit in the complainant's case. In such cases it would be desirable if parties choose compounding during the earlier stages of litigation. If however, the accused has a valid defence such as a mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums.

The Supreme Court in a case ***'Damodar S. Prabhu Vs. Sayed Babulal H'*** in Criminal Appeal No.963 of 2010 considered and framed certain guidelines which permit the compounding of offence under Section 138 of the Negotiable Instruments Act, 1881 even at the stage of revision or appeal before the High Court after long deliberations having due assistance by the learned Attorney General who was appointed as Amicus Curiae to assist the Apex Court and concluded as under.

“We are also conscious of the view that the judicial endorsement of the above quoted guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 of the Cr.P.C cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the Court is

spent on the trial of these cases and the parties are not liable to pay any Court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end. Even in the past, this Court has used its power to do complete justice under Article 142 of the Constitution to frame guidelines in relation to subject-matter where there was a legislative vacuum.”

In view of the factual aspects and the case law in the ‘**Damodar S. Prabhu (supra)**’, the prayer in this application under Section 482 Cr.P.C. for seeking permission to compound the offence is accepted.

In view thereof, all other miscellaneous applications stand rendered infructuous, the main petition as well stands disposed of in the aforesaid terms.

03.03.2023
pchowla

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>