

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

207

CRM-M-37151-2022
Date of decision: 18.07.2023

Chetan Anand

....Petitioner

Versus

Raj Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Robin Singh, Advocate
for the petitioner

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of criminal complaint dated 09.07.2019, Annexure P-1 filed by the respondent-complainant under Section 138 of the Negotiable Instruments Act, 1881 and summoning order dated 09.07.2019, Annexure P-2 alongwith all consequential proceedings as well as order dated 12.07.2022, Annexure P-5.

2. Learned counsel has challenged the order dated 12.07.2022, Annexure P-5, whereby his application filed for compounding of the offence on account of the fact that he was ready to deposit the amount of dishonored cheque, got dismissed on the ground that the complainant is not willing to compound the offence. It is further submitted that over and above the cheque amount, he was ready to compensate the complainant to the tune of Rs.17,000/-. However, despite service, none had appeared for respondent No. 2 and this Court vide order dated 04.07.2023, appointed a Legal Aid Counsel to represent the respondent for assisting the Court. Reliance is placed upon the judgment of Hon'ble the Supreme

Court in **M/s Meters and Instruments Private Limited and another vs. Kanchan Mehta**, 2017(3) Apex Court Judgments (SC) 396.

3. Heard.

4. It would be profitable to refer to paras 11, 18 and 19 of the judgment in the case of **M/s Meters and Instruments Private Limited** (supra) which read thus:-

“11. While it is true that in **Subramaniam Sethuraman versus State of Maharashtra, 2004(4) RCR (Criminal) 349: (2004) 13 SCC 324** this Court observed that once the plea of the accused is recorded under Section 252 of the Cr.P.C., the procedure contemplated under Chapter XX of the Cr.P.C. has to be followed to take the trial to its logical conclusion, the said judgment was rendered as per statutory provisions prior to 2002 amendment. The statutory scheme post 2002 amendment as considered in **Mandvi Cooperative Bank and J.V. Baharuni** (supra) has brought about a change in law and it needs to be recognised. After 2002 amendment, 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, where the accused tenders the cheque amount with interest and reasonable cost of litigation as assessed by the Court. Such an interpretation was consistent with the intention of legislature. The court has to balance the rights of the complainant and the accused and also to enhance access to justice. Basic object of the law is to enhance credibility of the cheque transactions by providing speedy remedy to the 17 Para 60 of **J.V. Baharuni (2014) 10 SCC 494 18 (2004)13 SCC 324** complainant without intending to punish the drawer of the cheque whose conduct is reasonable or where compensation to the complainant meets the ends of justice. Appropriate order can be passed by the Court in exercise of its inherent power under Section 143 of the Act which is different from compounding by consent of parties. Thus, Section 258 Cr.P.C. which enables proceedings to be stopped in a summons case, even though strictly speaking is not applicable to complaint cases, since the provisions of the Cr.P.C. are applicable “so far as may be”, the principle of the said provision is applicable to a complaint case covered by Section 143 of the Act which contemplates applicability of summary trial provisions, as far as possible, i.e. with such deviation as may be necessary for speedy trial in the context.

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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.

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.”

5. Learned counsel for the petitioner prays for withdrawal of the present petition with liberty to enable him to file an appropriate application before the trial Court in terms of the aforesaid judgment.

6. Disposed of with the liberty aforesaid.

(AMAN CHAUDHARY)
JUDGE

18.07.2023

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