



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on: November 29, 2023*
Pronounced on: December 13, 2023

+ CRL.M.C.970/2023 & CRL.M.A. 3701/2023

NAYATI MEDICAL PVT. LTD. AND ORS. Petitioners
Through: Mr. Simarpal Singh Sawhney and
Mr. Siddhant Juyal, Advocates Mr.
Vinit Trehan and Mr. Bhavya Jain,
Advocates

Versus

A.S PHARMA PVT. LTD. Respondent
Through: Mr. Vinit Trehan and Mr. Bhavya
Jain, Advocates

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The present petition has been filed by the petitioners under Section 482 of the Code of the Criminal Procedure, 1973 [***Cr.P.C.***] seeking setting aside the order dated 06.02.2023 passed by the learned Trial Court in Complaint Case No.5564/2022 titled “***A.S. Pharma Pvt. Ltd. vs M/S Nayati Medical Pvt. Ltd. & Ors.***” alongwith CC No.5564/2023 pending before the learned Trial Court.

2. As per facts, the petitioners/accused persons and the respondent/complainant were doing business. In lieu of some pending dues, the petitioners issued cheque no.17632 dated 19.01.2020 and cheque no.17633 dated 09.02.2020 drawn on ‘***The South Indian Bank Limited, Garhi Chowk, Ghaziabad***’ for an amount of Rs.3,00,000/- and

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Rs.3,50,000/- respectively, which returned dishonoured with remarks “**Payment stopped by Drawer**” vide return memo(s) dated 18.03.2020. Thereafter, the respondent sent a Legal Notice dated 29.04.2022 and upon non-receipt of a satisfactory response from the petitioners, the respondent filed a complaint under Sections 138/139/142 of the Negotiable Instruments Act, 1881 [**N.I. Act**] before the learned Trial Court on 07.06.2022. Summons thereon were issued *vide* order dated 06.08.2022. During the pendency of the said proceedings, at the outset, the petitioners showed their willingness to settle the matter, however, the complaint could not be settled since the petitioners and respondent were never *ad-idem*.

3. The petitioners then preferred an application under Section 320 Cr.P.C. before the learned Trial Court, which was dismissed vide the impugned order dated 06.02.2023 under challenge before this Court.

4. Learned counsel for the petitioners submitted that the petitioners are willing to settle the matter since long and are willing to pay the total cheque(s) amount along with 10% interest since the day it became due alongwith Rs.50,000/- overhead. Placing reliance upon **Meters & Instruments Pvt. Ltd. & Anr. vs. Kanchan Mehta** (2018) 1 SCC 560 and the judgement dated 15.12.2022 of the High Court of Himachal Pradesh in Criminal Revision No.293/2021 titled **Rajinder Kumar vs Pushpa Devi**, the learned counsel for the petitioners submitted that this Court under Section 482 Cr.P.C. can compound a case under the NI Act in view of Section 147 NI Act, even without the consent of the complainant.

5. *Per contra*, learned counsel for the respondent submitted that **Rajinder Kumar (supra)** is not applicable to the facts herein as it was



arising of the final order unlike the present case, moreover, the respondent is willing to settle the matter only if all the cases pending *inter-se* them come to an end. Furthermore, a complaint case cannot be compounded without the consent of both the parties.

6. This Court has heard the learned counsel for the parties and perused all the documents on record alongwith the judgments cited by them.

7. The moot issue for consideration before this Court pertains to setting aside the impugned order whereby the learned Trial Court whilst considering the application under Section 320 Cr.P.C. noted that it could not allow the compounding application without the consent of the complainant considering *Meters & Instruments Pvt. Ltd. (supra)* as also *RE: Expeditious Trial of Cases Under Section 138 of N.I. Act, 1881* AIR 2021 SC 1957.

8. Succinctly put, this Court is called upon to adjudicate upon a scenario wherein the petitioners as the drawee from whose account the cheques have dishonoured, after accepting their liability are willing to settle the matter by paying not only the total cheques amount but also 10% interest thereon since the day it became overdue alongwith Rs.50,000/- overhead and the respondent/ complainant as the drawer in whose name the cheques were issued, who is not willing to accept the aforesaid offer and wants to carry on with the complaint before the Court of law.

9. Prior to advertng to the facts involved, the Hon'ble Supreme Court in *Meters and Instruments (supra)* while dealing with a case where the High Court of Punjab and Haryana at Chandigarh rejected the prayer of the appellants, before the Apex Court, for compounding the offence under Section 138 of the N.I. Act and has held that the offence under Section



138 N.I. Act are primarily of a civil wrong. It has also been held therein that the object of the provisions under Section 138 N.I. Act is primarily of compensatory nature, thus, compounding at the initial stage must be encouraged but is not debarred at later stage, subject to appropriate compensation acceptable to the parties or the Court. Lastly, it has further been held that 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.

10. Similarly, Hon'ble the Supreme Court in *Expedition Trial (supra)* also held as under:-

“17. It was observed therein that the order taking cognizance can only be subject-matter of a proceeding under Section 482 of the Code as subordinate criminal courts have no inherent power. There is also no power of review conferred on the trial courts by the Code. As there is no specific provision for recalling an erroneous order by the trial court, the judgment in K.M. Mathew [K.M. Mathew v. State of Kerala, (1992) 1 SCC 217 : 1992 SCC (Cri) 88] was held to be not laying down correct law. The question whether a person can seek discharge in a summons case was considered by this Court in Subramaniam Sethuraman v. State of Maharashtra [Subramaniam Sethuraman v. State of Maharashtra, (2004) 13 SCC 324 : 2005 SCC (Cri) 242] . The law laid down in Adalat Prasad [Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338 : 2004 SCC (Cri) 1927] was reiterated.”

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“20. Section 143 of the Act mandates that the provisions of summary trial of the Code shall apply “as far as may be” to trials of complaints under Section 138. Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint. Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act. The judgment of this Court in Meters & Instruments [Meters & Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560 : (2018) 1 SCC (Civ) 405 : (2018) 1 SCC (Cri) 477] insofar as it conferred power on the trial court to discharge an accused is not good law. Support taken from the words “as far as may be” in Section 143 of the Act is inappropriate. The words “as far as may be” in Section 143 are used only in respect of applicability of Sections 262 to 265 of the Code and the summary procedure to be followed for trials under Chapter XVII. Conferring power on the court by reading certain words into provisions is impermissible. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation [J. Frankfurter, Of Law and Men : Papers and Addresses of Felix Frankfurter.] . The Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires [Duport Steels Ltd. v. Sirs, (1980) 1 WLR 142 : (1980) 1 All ER 529 (HL)] . The court cannot add words to a statute or read words into it which are not there [Union of India v. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248] .

21. The trial court cannot be conferred with inherent power either to review or recall the order of



issuance of process. As held above, this Court, in its anxiety to cut down delays in the disposal of complaints under Section 138, has applied Section 258 to hold that the trial court has the power to discharge the accused even for reasons other than payment of compensation. However, amendment to the Act empowering the trial court to reconsider/recall summons may be considered on the recommendation of the Committee constituted by this Court which shall look into this aspect as well.”

11. As per Section 147¹ of the NI Act, the nature of offence under Section 138 N.I. Act, is primarily related to a civil wrong and thus Legislature in its wisdom in 2002 Amendment of the N.I. Act included Section 147.

12. Broadly speaking, in the considered opinion of this Court, the essence of all the aforesaid pronouncements by the Hon’ble Supreme Court coupled with Section 138 of the N.I. Act read together with the other provisions of the N.I. Act is that the consent of the complainant is not mandatory at the time of compounding of the offence under Section 138 of the N.I. Act, once the complainant has been equitably compensated.

13. In effect, whence the complainant has been reasonably compensated the accused can be discharged/ acquitted even without the consent of the complainant, in the interest of justice and to prevent the abuse of the process of law, since once an accused accepts his liability to pay the cheque amount, there will be no fruitful purpose in keeping the complaint alive.

¹Section 147: **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].



14. Further, even whence the accused has been found guilty of the offence under Section 138 of the N.I. Act. it is upon the Court to decide the quantum of sentence and it is not mandatory to put the accused behind the bars keeping in view the nature of the offence and the accused can be discharged/acquitted with fine as well, which finds due mention in the statute as well “*be punished with imprisonment for [a term which may be extended to two years’], or with fine which may extend to twice the amount of the cheque, or with both*”.

15. Thus, as per settled position of law discussed hereinabove, the position qua compounding of offence under Section 138 N.I. Act is very clear. Further, the offence under Section 138 of the N.I. Act is of a civil wrong and the nature of liability on the faulting party is compensatory in nature.

16. Moreover, Section 482 of the Cr.P.C. empowers this Court to exercise its inherent powers, though sparingly, albeit when it is called for meeting the ends of justice especially, if it is for the welfare of the parties, the fairness of trial, the overall pendency of the cases as also for bringing quietus to the disputes *inter-se* the parties, in view of the overburdened existing legal system. The present proceedings are arising wherein the petitioners have not only admitted their liability but are also willing to pay the admitted amount with certain overheads. There is no impediment in this Court accepting the same, more so, as the same is not against any of the provisions of the statute. Thus, this Court does not hesitate to exercise its inherent powers under Section 482 Cr.P.C. coupled with those under Section 147 of the N.I. Act, primarily when in the considered opinion of this Court, it will not serve any purpose by keeping the complaint of the



respondent/ complainant pending before the learned Trial Court. Also, in view of the factum that it shall not only save the time, effort and money of the parties but also public at large.

17. Accordingly, the present petition is allowed and the offence of the petitioners/ accused persons in Complaint Case No.5564/2022 titled **A.S. Pharma Pvt. Ltd. vs M/S Nayati Medical Pvt. Ltd. & Ors.** pending before the learned Trial Court is hereby compounded, *albeit* subject to the petitioners depositing before the concerned learned Trial Court the cumulative cheque(s) amount of Rs.6,50,000/- (*Rs. Six Lakhs fifty thousand only*) with 12% simple interest per annum thereon from the date of cheque(s) return memo i.e. 18.03.2020 till the date of actual payment of the amount as also a sum of Rs.1,00,000/- (*Rs. One Lakh only*), within a period of eight weeks. Needless to mention, the amount, if any, already deposited before the learned Trial Court be adjusted in the aforesaid sum(s). The respondent/complainant is free to move an appropriate application for release of the amount deposited before the learned Trial Court in above terms.

18. A copy of this order be sent to the concerned Trial Court for compliance.

19. Accordingly, present petition along with the pending application, if any, is disposed of in the aforesaid terms.

SAURABH BANERJEE, J

DECEMBER 13, 2023/So