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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 5th December, 2023***

+ **CRL.M.C. 3101/2021 & CRL.M.A. 19264/2021**

SANJAY MOHAPATRA

..... Petitioner

Through: Ms. Rajdipa Behura, Mr. Philomon Kani, Mr. Ashray Behura, Ms. Neha Dobriya, Ms. Simrat Kaur Sareen, Ms. Aishwarya Gupta, Ms. Nandini Sharma and Ms. Hansika Sahu, Advocates.

versus

TOP MOTOCOMPONENTS PVT. LTD.

..... Respondent

Through: Mr. Sahil Sharma, Advocate.

+ **CRL.M.C. 317/2022 & CRL.M.A. 1328/2022**

SANJAY MOHAPATRA

..... Petitioner

Through: Ms. Rajdipa Behura, Mr. Philomon Kani, Mr. Ashray Behura, Ms. Neha Dobriya, Ms. Simrat Kaur Sareen, Ms. Aishwarya Gupta, Ms. Nandini Sharma and Ms. Hansika Sahu, Advocates.

versus

TOP MOTOCOMPONENTS PVT. LTD.

..... Respondent

Through: Mr. Sahil Sharma, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Crl. M.C. 3101/2021 has been filed by the Petitioner seeking setting aside of the order dated 18.11.2021 passed by learned MM (NI Act), Digital Court-03, Central District, Tis Hazari Court, New Delhi, in CC



No.2383/2021 titled '*Top Motocomponents Pvt Ltd through AR v. Sanjay Mohapatra, Proprietor of Sandhya Trading*', whereby Petitioner's application for compounding the offence under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') filed under Section 320 Cr.P.C. read with Section 147 of NI Act, has been dismissed. CrI. M.C. 317/2022 has been filed for quashing complaint bearing CC No.2383/2021 titled '*Top Motocomponents Pvt Ltd through AR v. Sanjay Mohapatra, Proprietor of Sandhya Trading*', dated 16.03.2021, registered under Section 138 of NI Act, with all proceedings emanating therefrom.

2. Petitioner is a proprietor of M/s Sandhya Trading which amongst other things, deals in the trade of spare parts and accessories for two-wheelers and three-wheelers. Respondent is a company also engaged in trading of spare parts and accessories for two-wheelers and three-wheelers under the trademark 'TOP'. Both the parties are engaged in numerous business dealings with each other in relation to spare parts. In the course of business transactions, Petitioner issued one cheque of Rs.5,00,000/- against the outstanding dues towards the Respondent, bearing No.113305 dated 23.03.2020 at Bhubaneswar in relation to purchase of various spare parts.

3. As per the case of the Respondent, when it presented the cheque for encashment on 18.06.2020, the cheque was dishonoured and the reason for dishonour was 'payment stopped by drawer'. Respondent issued a Legal Notice on 16.07.2020, which was received by the Petitioner on 01.08.2020. Respondent thereafter instituted the criminal complaint bearing CC No.2383/2021 for dishonour of the aforementioned cheque. Petitioner did not appear before the learned Magistrate on a couple of dates after receipt of summons as he was suffering from COVID-19. Subsequently, Petitioner entered appearance virtually and paid the cost of Rs.5,000/- as also filed one



P.R. Bond of Rs.50,000/- on the same day. On 18.11.2021, Petitioner filed an application under Section 320 Cr.P.C. read with Section 147 of the NI Act for compounding the offence, as he had already paid a sum of Rs.50,000/- to the Respondent on 01.08.2020 through NEFT/RTGS and a further sum of Rs.50,000/- each on 17.08.2020 and 07.10.2020, respectively. The application was dismissed by the learned MM on the same day, on the ground that application seeking unilateral compounding was not maintainable at that stage.

4. Learned counsel for the Petitioner contends that the dishonour of the cheque was not on account of any deliberate or malafide act of the Petitioner and the non-payment was on account of sudden closure of Petitioner's business during Pandemic COVID-19 and the official lockdown declared by the Government of Odisha post the lifting of National lockdown. This fact was clearly informed to the representatives of the Respondent telephonically and they assured that in the circumstances, no coercive action shall be taken. The learned MM also overlooked the fact that on 01.08.2020 when the Legal Notice was received by the Petitioner, payment of Rs.50,000/- was made through RTGS to the Respondent, so that no legal proceedings are initiated. Subsequently, another sum of Rs.1,00,000/-, in two tranches, was admittedly paid and which shows the bonafides of the Petitioner. Petitioner had categorically mentioned in the application for compounding of the offence that he had paid 30% of the cheque amount and undertakes to pay the balance as directed by the Court.

5. It is further submitted that both Petitioner and the Respondent were willing to settle the matter and therefore, the learned MM should have either compounded the offence or referred the parties to mediation and deferred the application till its outcome. The Supreme Court in ***Damodar S.***



Prabhu v. Sayed Babalal, (2010) 5 SCC 663, considered the scope of Section 147 of NI Act and observed that the provision does not prescribe a stage appropriate for compounding the offence and is also silent as to whether the same can be done at the instance of the Complainant or with the leave of the Court. After examining and deliberating on the provisions of the NI Act and Section 320 Cr.P.C., the Supreme Court issued Guidelines on the subject and the case of the Petitioner is squarely covered by the said judgment.

6. Learned counsel for the Respondent, at the outset, submits that he cannot and will not dispute the fact that the case of the Petitioner is covered by the Guidelines in the judgment of ***Damodar S. Prabhu (supra)*** and fairly hands over a recent judgment of the Bombay High Court in ***Anuradha Kapoor and Others v. State of Maharashtra through Police Station Officer and Another, 2023 SCC OnLine Bom 2543***, wherein the Court has compounded the offence under Section 138 of NI Act, subject to payment of the cheque amount to the Complainant therein along with other directions.

7. I have heard the learned counsels for the parties and examined the submissions made.

8. The Supreme Court after considering various provisions of the NI Act and the scheme contemplated under Section 320 Cr.P.C. issued the following Guidelines:-

“THE GUIDELINES

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any cost on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at the subsequent stage, compounding can be allowed subject



to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court the figure would increase to 20% of the cheque amount.”

9. Subsequently, the Supreme Court in ***Meters and Instruments Private Limited v. Kanchan Mehta, (2018) 1 SCC 560***, where an order of the High Court of Punjab & Haryana was challenged rejecting the prayer of the Appellants for compounding the offence under Section 138 of NI Act on payment of the cheque amount, held as follows:-

“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 Code of Criminal Procedure but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 of the Code of Criminal Procedure 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 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) Code of Criminal Procedure to award suitable compensation with default sentence under Section 64 Penal Code, 1860 and with further powers of recovery Under Section 431 Code of Criminal Procedure. With this approach, prison sentence of more than 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 dishonour 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 Code of Criminal Procedure. 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 Code of Criminal Procedure. 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) Code of Criminal Procedure with sentence of less than one year will not be adequate, having regard to the amount of the cheque, conduct of the Accused and other circumstances.”

10. Be it noted that this issue came up before the Bombay High Court in **Anuradha Kapoor (supra)**, where the question was whether in an appropriate case, the offence under Section 138 of NI Act could be compounded, if the non-Applicant/Complainant is willing to offer his consent. Relying on Guideline (a) from the judgment in **Damodar S. Prabhu (supra)**, the Bombay High Court held as follows:-

“22. The guideline clearly stipulates that when writ of summons is issued, the accused is made to know that he could make an application for compounding the offence at the first or second date of hearing of the case



and that if such an application is made, the compounding may be allowed by the Court without imposing any costs on the accused. Thus, the accused is made to believe that if he files an application for compounding offence at the initial stage of the case, the compounding will not only be allowed but will be allowed without imposing costs. The question, therefore is, if the accused in response to the writ of summons files application for compounding offence, can the Court or will it be appropriate for the Court to reject the application on the ground of absence of consent of the complainant, particularly when the accused is not put to notice that compounding will be allowed only if the complainant extends his consent. To my mind, in normal circumstances, when the application for compounding offences u/s 138 of the NI Act is made at the initial stage of the case and if the complainant is duly compensated, the trial Court will be fully justified in compounding the offence without consent of the complainant.

23. *The purpose behind the intimation to the accused that he could make an application for compounding is to encourage settlement, considering the nature of dispute u/s 138 of the N.I. Act. Para Nos. 12 and 13 in Damodar's case on this aspect, is relevant which read thus:*

"12. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary (Cited from : K.N.C. Pillai R.V. Kelkar's Criminal Procedure, 5th edn. (Lucknow : Eastern Book Company, 2008) at p. 444):

A crime is essentially a wrong against the society and the State. Therefore, any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognize some of them as compoundable offences and some others as compoundable only with the permission of the Court.

In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act (Cited from : Arun Mohan, Some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act-Tackling an avalanche of cases (New Delhi; Universal law Publishing Co. Pvt. Ltd., 2009) at p.5)

....Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who



is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued.

13. It is quite obvious that with 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. There is also some support for the apprehensions raised by the learned Attorney General that a majority of the cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice-delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. Furthermore, the written submissions filed on behalf of the learned Attorney General have stressed on the fact that unlike Section 320 of the CrPC, Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court. As mentioned earlier, the learned Attorney General's submission is that in the absence of statutory guidance, parties are choosing compounding as a method of last resort instead of opting for it as soon as the Magistrates take cognizance of the complaints. 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 mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums."

24. The Supreme Court has noted the ground realities and practicalities in the cases filed under Sec. 138A of the N.I. Act. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The Court noted that bulk number of cases were settled and accordingly observed that with respect to the offence of dishonour of cheque, it is compensatory aspect of the remedy



which should be given priority over the punitive aspect. The Supreme Court took into account the delaying tactics of the accused in opting for compounding and thus suggested that, in such cases it would be desirable if parties choose compounding during the earlier stages of litigation, subject to availability of the valid defence as noted in the order. Accordingly, the Supreme Court issued directions to modify writ of summons to the accused making it clear to him of availability of option of compounding.

25. *In the present case, the complaint has been filed on 29.03.2018, the summons is said to have been issued in April, 2018. Advocates appeared through counsel. On 11.12.2018 the applicants have filed an application seeking compounding of offence. Demand draft of the entire amount of cheque was also annexed. Strictly speaking, the applicants have not filed the application on 1st or 2nd hearing of the case but have filed the same on third hearing of the case which can be said to be an initial stage. This application has been filed in response to the summons issued by the Court making it clear that if the applicants would make an application for compounding of offence at the first or second hearing of the case, the compounding may be allowed. In the circumstances, unless the complainant puts forth the justifiable reason to not give consent, in my considered view, the cumulative effect of the law laid down in Damodar's case read with JIK and Meter & Instrument's case would require the trial Court to consider the application seeking compounding of offence favourably, else the very purpose of issuance of summons with accompaniment encouraging accused to opt for compounding offence and the guidelines issued in Damodar's case as clarified in Meters & Instruments case would be frustrated/defeated.*

26. *It appears that the attention of learned Magistrate was not invited to the guidelines issued in Damodar's case, as clarified in Meters & Instrument's case and, therefore, the learned Magistrate has by relying upon the JIK's case, declined to compound the offence."*

11. Applying the judgment of the Supreme Court in **Damodar S. Prabhu (supra)** and the observations of the Bombay High Court in **Anuradha Kapoor (supra)** to the present case, in my view, Petitioner has made out a case for compounding of the offence under Section 138 of NI Act. Chronology of the dates and events indicates that Respondent instituted the criminal case against the Petitioner on 16.03.2021. Summons were received by the Petitioner for appearance on 24.05.2021 before the learned MM. He did not appear until 18.11.2021 on account of Pandemic COVID-19 as the



Petitioner himself was affected by the virus. On 18.11.2021 Petitioner entered appearance virtually and paid the cost as well as filed the P.R. Bond of Rs.50,000/-. On the same day, the application was filed for compounding the offence. It was brought forth in the application that the Petitioner had already paid an amount equal to 30% of the cheque amount and also furnished the details. It was categorically stated in para 3 that Petitioner undertakes to make payment of the balance amount without further delay and necessary order be passed. Strictly speaking, the application was not filed on the very first or second date of hearing, but was at a very initial stage. As the order sheets indicate while passing the impugned order, the learned MM dismissed the application as non-maintainable since it was a unilateral act of the Complainant. No efforts were made to seek the consent of the Complainant or refer the parties for mediation in keeping with the aim and objectives of the Guidelines of the Supreme Court in **Damodar**'s case and thereby defeating the purpose for which the Guidelines were issued by the Supreme Court. This could well be because the attention of the learned MM was not brought to the said Guidelines. Be that as it may, the Complainant has no objection to the compounding of the offence and as noted above, learned counsel for the Respondent, on instructions, states that he is willing to settle the matter if the amount due is paid along with interest and cost, as directed by the Bombay High Court.

12. Accordingly, in light of the Guidelines issued by the Supreme Court in the case of **Damodar S. Prabhu (supra)** as well as the judgment of the Bombay High Court, which I am persuaded to follow, as well as looking to the fact that the Petitioner was unable to pay the cheque amount on account of Pandemic COVID-19 coupled with the fact that 30% of the amount stands paid and Petitioner is ready to pay the balance within the time frame



fixed by this Court, I find no impediment in compounding the offence under Section 138 of NI Act in favour of the Petitioner. Present case, to my mind, is a fit case for exercising inherent power under Section 482 Cr.P.C. in the given facts and circumstances and in the interest of justice as well as to prevent abuse of the process of Court by unnecessarily continuing and prolonging the criminal proceedings, when both parties are willing to settle and Petitioner is ready and willing to pay the balance amount.

13. The impugned order dated 18.11.2021 passed by the learned MM in CC No.2383/2021 titled '*Top Motocomponents Pvt Ltd through AR v. Sanjay Mohapatra, Proprietor of Sandhya Trading*', is set aside. Offence punishable under Section 138 of NI Act against the Petitioner stands compounded, subject to Petitioner's depositing before the Trial Court by way of demand draft the balance amount of Rs.3,50,000/- along with interest @ 9% per annum from 23.03.2020 the date of issue of the cheque till the date of the payment and Rs.25,000/- towards cost of litigation within 20 working days commencing from today, which amount the Respondent shall be entitled to withdraw.

14. Both petitions are allowed, setting aside the impugned order dated 18.11.2021 and quashing the complaint being CC No.2383/2021 titled '*Top Motocomponents Pvt Ltd through AR v. Sanjay Mohapatra, Proprietor of Sandhya Trading*', subject to compliance by the Petitioner of the directions/ conditions as aforesaid, within the timelines fixed by this Court.

JYOTI SINGH, J

DECEMBER 05, 2023/pa