

15.03.2024
Serial nos. 2, 3 & 4
Piya
Ct. No. 30

CRR 1530 of 2022
India Green Reality (p) Ltd. & Anr.
Vs.
Jugal Kishore Sadani & Anr.

With

CRR 1531 of 2022
India Green Reality (p) Ltd. & Anr.
Vs.
Jugal Kishore Sandani & Anr.

With

CRR 1536 of 2022
India Green Reality (p) Ltd. & Anr.
Vs.
Jugal Kishore Sadani & Anr.

For the Petitioners : Mr. Sayan Mukherjee,
Ms. Puja Naskar.

For the Opposite Party : Mr. Dhiraj Trivedi,
Mr. Sunil Gupta,
Ms. Swapna Jha.

- 1. The three revisions are taken up together for final order by one common order.
- 2. The following statement of Accounts is placed on record by the petitioner and admitted by the opposite party (in person) through his learned counsel.

3. INDIA GREEN REALITY (P) LTD & ANR. VS JUGAL KISHORE SADANI & ANR.

	CRR/1530/2022 C 58202/2017	CRR/1531/2022 C 7575/2017	CRR/1536/2022 C 7576/2017	Total
Compensat	3,50,000/-	2,70,000/-	90,000/-	7,10,000/-

ion directed by the Ld. Magistrate				
Deposit in Lower Appellate Court	66,000/-	50,000/-	16,000/-	1,32,000/-
Deposit as per Receipts	67,000/-	2,56,000/-	1,99,000/-	5,22,000/-
Total Amount Deposited	66,000/- +67,000/- 1,33,000/-	50,000/- +2,56,000/- 3,06,000/-	16,000/- +1,99,000/- 2,15,000/-	5,22,000/- +1,32,000/- 6,54,000/-
Amount Left [To be paid by 3 Demand Drafts]				7,10,000/- -6,54,000/- 56,000/-

4. The balance account of Rs.56000/- has been paid by way of three demand drafts in count on 12-03-2024 to the opposite party (in person) through his learned counsel .
5. Copies of the receipts has been placed on record.
6. In **Krishan Gupta and Anr. Vs State of West Bengal and Anr., AIR 2007 (NOC) 2021 (CAL.), on 23 March, 2007**, held:-

*“12. Last but not least, in the instant case I found the conviction of the appellant under Section 138 of the Negotiable Instruments Act being upheld in appeal and order of sentence of fine being set aside there is nothing **except compensation in consequences of conviction.** The conviction entails imposition of sentence unless imposition of sentence is kept in abeyance by operation of law. **The Negotiable Instruments Act provides for sentence of imprisonment and sentence of fine. The compensation is not the part of any sentence neither it is a substitute of sentence but in addition thereto.** The provisions of Section 357(3) of the Code makes it abundantly clear that when Court imposes a sentence may order the accused person to pay by way of compensation such amount as may be specified, when fine does not form the part of the sentence. **Therefore, no compensation can be awarded without being preceded by imposition of sentence and obviously not by imposition of sentence of***

fine. *In the facts and circumstances of this case, I am of the view this case does not deserve to be dealt with under Section 360 of the Code of Criminal Procedure. While the order of conviction stands confirmed, the order of awarding compensation is set aside only on the ground that the same was not preceded by imposition of any sentence. The case is remanded back to the Trial Court to pass necessary order only on the question of sentence and compensation in accordance with law without being influenced by the fact of the amount of compensation was reduced by the Appellate Court, which was not only otherwise wholly unjustified, but has been set aside by this Court. The Trial Court is further directed to take into consideration the ratio of the decision of the case of Mongilal v. State of M.P. reported in 2004 SCC (Cri) 1058 : 2004 Cri LJ 880 and in the case of Biswajit Chowdhury v. S.S. Distributors reported in 2002 (3) CHN 682.”*

7. As such the sentence passed by the Magistrate is not in accordance with law, as only an order of payment of compensation has been directed without there being any substantive sentence as required under Section 138 of the N.I. Act **(Krishan Gupta and Anr. Vs State of West Bengal and Anr., (Supra))**.
8. But the present cases are disposed of to meet the **ends of justice** as the said sentence of the payment of compensation has been duly complied with by the petitioner in all the cases and at this stage there remains no outstanding dues.
9. The Supreme Court in **Meters and Instruments Private Limited and Anr. vs Kanchan Mehta, (2018) 1 SCC 560, decided on October 5, 2017**, held:-

“18.2. *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.

18.3. 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. The Supreme Court in ***K. M. Ibrahim vs K. P. Mohammed & Anr., Criminal Appeal No. 2281 of 2009 (arising out of SLP (Crl.) No. 9263 of 2009 CRL. M.P. 15423/2009), decided on December 2, 2009***, held:-

“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. The various decisions cited by Mr. Rohtagi on this issue does not add to the above position.

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, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.

13. Since the parties have settled their disputes, in keeping with the spirit of Section 147 of the Act, we allow the parties to compound the offence, set aside the judgment of the courts below and acquit the appellant of the charges against him.”

- 11. The opposite party is at liberty to withdraw the amounts deposited before the trial court by the petitioner on making an appropriate application before the Magistrate who shall permit by considering the same in accordance with law.**
- 12. CRR 1530 of 2022 with CRR 1531 of 2022 with CRR 1536 of 2022 are thus allowed.**
- 13.** Accordingly, as the parties in this case have also settled their disputes and in keeping with the spirit of Section 147 of the N.I. Act even at this stage, the parties are allowed to compound the offences.
- 14. (a)** The Order dated 06.04.2022 passed by the Court of the Learned Additional District & Sessions' Judge, 2nd Fast Track Court, City Sessions Court, Bichar Bhavan, Calcutta in connection with Criminal Appeal No. 04 of 2019 thereby affirming the judgment and order dated 16.11.2018 passed by the Ld. M.M., 6th Court, Calcutta, convicting the Petitioners/Revisionists under Section 138 and sentencing the Petitioners/Revisionists to pay compensation amounting to Rs. 3,50,000/- to the opposite party no. 1 within one month from the date of order in default the Petitioner No. 1 and 2 would undergo Simple Imprisonment for three months,

(b) The Order dated 31.03.2022 passed by the Court of the Learned Additional District & Sessions' Judge, 2nd Fast Track Court, City Sessions Court, Bichar Bhavan,

Calcutta in connection with Criminal Appeal No. 01 of 2019 thereby affirming the judgment and order dated 16.11.2018 passed by the Ld. M.M., 6th Court, Calcutta, convicting the Petitioners/Revisionists under Section 138 and sentencing the Petitioners/Revisionists to pay compensation amounting to Rs. 2,70,000/- to the opposite party no. 1 within one month from the date of order in default the Petitioner/Revisionist no. 2 would undergo Simple Imprisonment for three months,

(c) The Order dated 31.03.2022 passed by the Court of the Learned Additional District & Sessions' Judge, 2nd Fast Track Court, City Sessions Court, Bichar Bhavan, Calcutta in connection with Criminal Appeal No. 02 of 2019 thereby affirming the judgment and order dated 16.11.2018 passed by the Ld. M.M., 6th Court, Calcutta, convicting the Petitioners/Revisionists under Section 138 and sentencing the Petitioners/Revisionists to pay compensation amounting to Rs. 90,000/- to the opposite party no. 1 within one month from the date of order in default the Petitioner/Revisionist no. 2 would undergo Simple Imprisonment for three months, **are hereby set aside** and the petitioners herein are acquitted of the charges against them in the said cases. ***(K. M. Ibrahim vs K. P. Mohammed & Anr. (Supra).***

- 15.** All connected applications, if any, stand disposed of.

- 16.** Interim order, if any, stands vacated.
- 17.** Copy of this order be sent to the learned Trial Court for necessary compliance.
- 18.** Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)