

01.03.2024
SL no.1
Piya (PA)
Ct no. 30

CRR 1533 of 2022

India Green Reality (P) Ltd. & Anr.

Vs

Sri Jugal Kishore Sadani & Anr.

Mr. Sayan Mukherjee
...for the Petitioner.

Mr. Dhiraj Trivedi
Mr. Sunil Gupta
Ms. Swapna Jha
...for the Opposite Parties.

1. The present revision has been preferred against an order dated 31.03.2022 passed by the Learned Additional District & Sessions' Judge, 2nd Fast Track Court, City Sessions Court, Bichar Bhavan, Calcutta in connection with Criminal Appeal No. 03 of 2019, affirming the judgment of conviction passed by the learned Metropolitan Magistrate, 6th Court, Calcutta in Case No. C-37028 of 2017, under Section 138 and sentencing the petitioner to pay compensation amounting to Rs. 3,50,000/- within one month from the date of order in default the Petitioner No. 1 and

Petitioner no. 2 would undergo Simple Imprisonment of three months.

- 2. The matter is heard in presence of the learned counsels for both the parties.
- 3. A statement of accounts has been filed before this Court by the petitioner, and admitted by the opposite party/complainant. The statement is as follows:-

AMOUNTS IN TABULAR FORM		
DATES	PARTICULARS	AMOUNT (RS.)
	Cheque Amount (Total)	3,32,000/-
16/11/2018	Compensation amount (as directed by the Learned Magistrate) (Total)	3,50,000/-
13/01/2021	Amount deposited at the Lower Appellate Stage (Receipt Annexed)	66,000/-
19/05/2022	Amount deposited (as per order of the Hon'ble High Court dated 10-5-2022) (Receipt Annexed)	2,56,000/-
		2,56,000/- + 66,000/- 3,22,000/-
	Total amount deposited	
	Total Compensation Amount	3,50,000/-
	Total Deposited Amount	3,22,000/-
	Amount left	28,000/-

- 4. The balance amount of Rs. 28,000/- has been paid by way of a draft in Court and received by the complainant in person as full and final settlement.

5. The ordering portion of the judgment of conviction and sentence dated 16.11.2018 passed by the learned Metropolitan Magistrate, 6th Court, Calcutta in C-37028/2017 which was affirmed by the order under revision by the Appellate Court is as follows:-

ORDERED

“that the accuseds are hereby convicted under section 255(2) of Code of Criminal Procedure 1973 for commission of an offence punishable under section 138 of the Negotiable Instrument Act, 1881, and thus is sentenced to pay a sum of Rs 3,50,000/-(three lakhs fifty thousand only) within one month from this day in default, the complainant would be at liberty to take appropriate steps against accused no. 1 and the accused person no. 2 would undergo simple imprisonment for a term of three months.

The complainant who is duly represented would be entitled to receive the amount of Rs 3,50,000/-(three lakhs fifty thousand only) if it is realized from the convict.

The convict is also directed to pay the said sum to the complainant, towards compensation under section 357(1)(b) of the Code of Criminal Procedure, 1973 within one month from this date.

Let the copy of the judgment be given to the convict free of cost.

Typed & corrected by me.

**Sd/-
Metropolitan Magistrate,
6th Court, Calcutta.”**

6. 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.”

- 7. 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.”*

8. CRR 1533 of 2022 is thus allowed.

9. Accordingly, as the parties in this case have also settled their disputes, 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.

10. The order dated 31.03.2022 passed by the Learned Additional District & Sessions' Judge, 2nd Fast Track Court, City Sessions Court, Bichar Bhavan, Calcutta in connection with Criminal Appeal No. 03 of 2019, affirming the judgment of conviction passed by the learned Metropolitan Magistrate, 6th Court, Calcutta in Case No. C-37028 of 2017, under Section 138 and sentencing the petitioner to pay compensation amounting to Rs. 3,50,000/- within one month from the date of order in default the Petitioner No. 1 and Petitioner no. 2 would undergo Simple Imprisonment of three months, **are set aside** and the petitioners herein are acquitted of the charges against them (**K.**

M. Ibrahim vs K. P. Mohammed & Anr. (Supra).

- 11.** All connected applications, if any, stand disposed of.
- 12.** Interim order, if any, stands vacated.
- 13.** Copy of this order be sent to the learned Trial Court for necessary compliance.
- 14.** Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)