

11.12.2024  
Serial no.2  
Piya  
Ct. No. 30

**CRR 1569 of 2022**

**+**

**CRAN 4 of 2024**

**Kamalesh Gayen.**

**vs.**

**State of West Bengal & Anr.**

Mr. Duke Banerjee

**... for the Petitioner**

Mr. MD. Zohaib Rauf

**... for the O.P.**

1. The present revision has been preferred praying for setting aside of the order dated 21.04.2022 passed by the Learned Additional District and Sessions Judge, Baruipur in connection with Criminal Appeal No. 05 of 2017 whereby the Learned Judge was pleased to dismiss the appeal on contest and affirmed the conviction and sentence dated 17.04.2017 passed by the learned Additional Chief Judicial Magistrate 1<sup>st</sup> Court at Baruipur in connection with C 1397 of 2008 under section 138 of the Negotiable Instruments Act whereby the learned Magistrate was pleased to find the petitioner guilty for the offence under section 138 of the Negotiable Instruments Act and convicted the petitioner herein for the said offence and sentenced the petitioner to suffer simple imprisonment for one year and also to

pay a fine of Rs. 10,00,000/- in default to suffer simple imprisonment for six months.

**2. CRAN 4 of 2024 has now been filed jointly by both the parties stating that a compromise/settlement has been arrived at between the parties** and an amount agreed upon by both the parties has been paid by the petitioner/accused. **The dispute/offence in this case is compoundable and has been settled and resolved amicably.** The grounds of settlement have been stated in the joint petition of compromise filed on affidavit by both the parties. It has been stated on affidavit by the opposite party no.2/complainant that in view of the said amicable settlement of dispute **he does not wish to proceed against the petitioner** in the impugned proceeding as he does not have any grievance against the petitioner at present.

**3.** Learned counsel for both the parties have submitted as per the affidavit filed before this court and have relied upon certain judgments.

**4.** The Supreme Court in ***B.V. Sessaiah vs. The State of Telangana & Anr. and B. Vamsi Krishna vs. The State of Telangana & Anr., (2023 Live Law(SC) 75) on 1<sup>st</sup> February, 2023***, held:-

*“8. In our view, the terms and conditions of the settlement entered into by the parties binds them to settle the dispute amicably, or through an arbitration as has been stated in clause 8 of the Memorandum of Understanding.*

**9. In such a circumstance, the Appellants cannot be convicted on the basis of the orders passed by the courts below, as the settlement is nothing but a compounding of the offence.**

**10. In the case of M/s. Meters and Instruments Private Limited & Anr. Vs. Kanchan Mehta,** this court held that the nature of offence under section 138 of the N.I. Act is primarily related to a civil wrong and has been specifically made a compoundable offence. The relevant paragraph of the judgement has been extracted herein:

“This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions’ cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 payee and credibility of business transactions suffers a setback. At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 amendment specifically made it compoundable.”

11. This is a very clear case of the parties entering into an agreement and compounding the offence to save themselves from the process of litigation. When such a step has been taken by the parties, and the law very clearly allows to do the same, the High Court then cannot override such compounding and impose its will.”

- 5.** Thus considering the said position of law as laid down by the Supreme Court in **B.V. Seshaiiah vs. The State of Telangana & Anr. and B. Vamsi Krishna vs. The State of Telangana & Anr. (Supra)**, the present revisional application along with CRAN 4 of 2024, which be made part of the record, **stands allowed.**

6. The order of conviction dated 21.04.2022 passed by the Learned Additional District and Sessions Judge, Baruipur in connection with Criminal Appeal No. 05 Of 2017 whereby the Learned Judge was pleased to dismiss the appeal on contest and affirmed the conviction and sentence dated 17.04.2017 passed by the learned Additional Chief Judicial Magistrate 1<sup>st</sup> Court at Baruipur in connection with C 1397 of 2008 under section 138 of the Negotiable Instruments Act whereby the learned Magistrate was pleased to find the petitioner guilty for the offence of section 138 of the Negotiable Instruments Act and convicted the petitioner herein for the said offence and sentenced the petitioner to suffer simple imprisonment for one year and also to pay a fine of Rs. 10,00,000/- in default to suffer simple imprisonment for six months **are hereby set aside.**
7. The petitioner/accused is accordingly discharged from the case and be set at liberty at once.
8. **The revisional application being CRR 1569 of 2022 along with CRAN 4 of 2024 are accordingly disposed of on compromise.**
9. All connected Applications, if any, stand disposed of.
10. Interim order, if any, stands vacated.
11. Copy of this order be sent to the Trial Court for necessary compliance.

- 12.** Parties to act on the basis of server copy of this order duly downloaded from the official website of this Hon'ble Court.
- 13.** Urgent photostat certified copy of this order, if applied for, be supplied to the parties as expeditiously as possible after complying with all legal formalities.

**(Shampa Dutt (Paul), J.)**