

**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**CRM-M-13304-2024 (O&M)**

**Decided on 15.03.2024**

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Vinay Yadav

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

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**CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

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Present: Ms. Ishma Randhawa, Tajeshwar S. Buttar, Avjit S. Randhawa  
and Himanshu Yadav, Advocates for the petitioner

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**Sandeep Moudgil, J.**

(1). This petition under Section 482 CrPC has been filed by the petitioner seeking to set aside the order dated 18.10.2023 passed in Criminal Revision Petition No.44/2023 titled 'Jindal Buildtech P.Ltd. & Ors. Vs. Vinay Yadav' by Additional Sessions Judge, Gurugram (Annexure P1) in complaint dated 30.09.2022 (Annexure P6) filed by the petitioner-complainant against the respondent-accused under Section 147 of Negotiable Instruments Act, 1881 for compounding of the offence.

(2). Briefly stated, the facts of the instant case are that in the month of November 2015, respondent-accused No.2 to 4 (in original complaint) had told petitioner-complainant that they are directors of M/s Jindal Buildtech Pvt Ltd and they required short term loan for expansion of their business. They requested petitioner-complainant to lend Rs.1 crore and promised to return the same alongwith interest @ 18 % P.A. The petitioner-complainant agreed to advance loan of Rs. 97,00,000/- to respondent-accused persons. He had given the amount to accused through RTGS dated 14.12.2015 and 8.12.2015. Towards the part payment, respondent-accused returned the amount of

Rs.9,50,000/- vide RTGS on 11.5.2016 and also issued cheque bearing No.000222 dated 1.9.2016 of Rs.30,50,000/- to petitioner-complainant. The petitioner-complainant had deposited the said cheque for encashment which was dishonoured with the remarks “ Insufficient Funds”. A legal notice dated 17.12.2016 was sent to the respondent Nos.2 to 5-accused but despite the legal notice they did not honour the cheque amount.

(3). On 30.9.2022, respondent No.5/Anita Jindal has moved an application for compounding the offence under Section 147 of NI Act on the ground that she had filed a quashing petition i.e. CRM-M 25600 of 2017 before this Court which was withdrawn on 23.9.2022. In another complaint bearing No.NACT-1505/2017 titled as ‘Vinay Yadav Vs. M/s Jindal Buildtech Pvt’, application under Section 147 of NI Act was filed and the said application was allowed vide order dated 7.8.2019 and respondent No.5-accused was directed to pay the cheque amount + interest @ 6 % P.A and costs and therefore, she wanted to get the matter closed and was ready to make the payment of the cheque amount and the interest/costs as imposed by the court in the above-said complaint. However, the said application for compounding of offence filed by respondent No.5 was dismissed by the trial court vide order dated 30.11.2022 against which revision petition was filed and the revisional court while setting aside the order dated 30.11.2022 passed by the trial court with a direction to the parties to settle the dispute. It is against the said revisional order dated 18.10.2023 the petitioner-complainant has filed the instant petition.

(4). Learned counsel for the petitioner-complainant submits that the order dated 30.11.2022 is a well reasoned order and is based on various

judicial pronouncements of the Apex Court and various High Courts where it has been authoritatively held that there can be no compounding of offence without the consent of the complainant. Reliance has been placed on **JIK Industries Limited and Others v. Amarlal v. Juman and Another [(2012) 3 SCC 255]**; **M/s Anant Tools (Unit No. II) Pvt. Ltd. & Ors. v. M/s Anant Tools Pvt. Ltd., Jalandhar [2019 (1) RCR (Criminal) 137]**; and **'Sarda Alloys Pvt. Ltd. v. Bansal Alloys and Metal Pvt. Ltd.' [2024 (1) RCR (Criminal) 574]** to contend that Section 147 of the NI Act makes an offence under NI Act a compoundable one but in order to make the offence compoundable the mode and manner of compounding such offences must be followed.

(5). The further argument raised by on behalf of the petitioner-complainant is that no relief can be granted to respondents No.2 to 5 who are repeated offenders having committed the offence of criminal perjury wherein they have as many as 20 such cases under Section 138/141 NI Act pending against them at New Delhi and Gurugram. It is also submitted that the petitioner-complainant has filed petition under Section 7 of Insolvency and Bankruptcy Code, 2016 ('IBC') before the NCLT, Chandigarh seeking insolvency of M/s Jindal Builtech Pvt. Ltd. for non- payment of debt wherein the Respondents No.2 to 5 have admitted that they had taken a short term loan of Rs. 97,00,000/- from the Petitioner-complainant and had assured its return within a year. However, in the application filed by the respondents No.2 to 5 under Section 145(2) of NI Act for cross examination of the Petitioner-complainant and the subsequent plea of defence recorded under Section 263(g) of CrPC on 25.01.2023, the respondents No.2 to 5 have

falsified on oath before the trial court to state that the said money was received by them for advance payment for PEB work which could not be completed and as such, the respondents No.2 to 5 have clearly committed the offence of criminal perjury and thus no relief of compounding can be extended to them.

(6). It is then vehemently argued that the order of the revisional Court is contrary to law since the reliance placed by the Court on **Damodar S. Prabhu vs. Sayed Babalal H. (2010) 5 SCC 663** is misplaced as the facts in the said case are completely distinguishable from the present case inasmuch as in **Damodar S. Prabhu's** case the parties had arrived at a settlement and jointly prayed for compounding of the offence under Section 147 of NI Act and while certain guidelines were framed, however, the Apex Court never dealt with the issue whether compounding can happen with or without the consent of the complainant.

(7). Heard learned counsel for the petitioner and gone through the paper-book.

(8). A perusal of the impugned order dated 18.10.2023 would bring forth that it has relegated the matter back to Trial Court to compound the same in terms of the affidavit filed by the private Respondents No.2 to 5. It has been argued that the order setting aside the trial court order dated 30.11.2022 is principally wrong as there could be no other connotation than to compound the offence under Section 147 of NI Act without the consent of the Petitioner-complainant.

(9). Respondent No.5-Anita Jindal had offered to settle the dispute and in this regard, she submitted her affidavit dated 15.7.2023, the relevant

extracts of which as recorded in the impugned order are reproduced here under:-

*“2. That in order to put an end to dispute/litigation, without prejudiced to the contentions, I on behalf of Jindal Buildtech Pvt Ltd as Authorised Representative and director of the company do hereby offer to pay the complainant as follows:*

*(d) A total sum of Rs. 36,60,000/- (Thirty six Lakh sixty thousand only) Out of which the cheque amount of Rs. 30.50 lakh and 20% above it, as compensation. The cheque amount of Rs 30.50 lakh will be paid immediately today on 17/07/2023 by the D.D on the name of Ultracon International (Complainant). This D.D is kept ready to be paid since 2019 The balance amount of Rs. 6.10lakh (i.e, 20% as compensation in addition), will be paid in next two working days by RTGS ie, on or before 20/07/2023). OR*

*(e) A total sum of Rs. 42,70,000/- (Forty two lakh seventy thousand only) Out of which cheque amount of Rs. 30.50 lakh by DD immediately interest @ Rs. 6% p a from date of dishonore from 30/11/2016 till month end i.e (30/07/2023) which amounts to a total sum of Rs. 12,20,000/- (Twelve lakh and twenty thousand till 30/07/2023) This interest amount will be paid on or before 30/07/2023*

*OR*

*(f) As decides by this Hon’ble court as fair and reasonable compensation in the interest of justice.”*

(10). On the other hand, the affidavit filed by the petitioner-complainant in the shape of objections declining to settle the dispute also needs to be mentioned, the relevant extracts of which reads as under:-

*2. That I say that the revisionist has filed an affidavit dated 15.7.2023 before this court interalia stating that it is willing to offer me either Rs. 36,60,000/- or Rs. 42,70,000/- against the admitted cheque of Rs.*

*30,50,000/- dishonoured on 30.11.2016 purportedly to put an end to the litigation.*

*3. That I say, at the outset, that the present case is a criminal revision petition filed under Section 397 of the Criminal Procedure Code, 1973 and thus involves limited questions of law for consideration by this court viz (a) whether an offence of dishonour of cheque, punishable under Section 138/141 of Negotiable Instruments Act, 1881 can be compounded without the consent of the complainant/aggrieved and (b) whether this court should exercise its limited revisional jurisdiction under Section 397 of Cr.P.C in favour of revisionist company and its directors who are apparently repeated offenders and have committed the offence of criminal perjury.?*

*That I say that even otherwise, the aforesaid monetary offer stated by the revisionist is not acceptable to me. I further say that the revisionist company and its directors are repeated offenders, wherein they have several section 138/141 NI Act cases pending against them before the criminal courts in Dwarka, New Delhi and also the criminal courts in Gurugram. I am placing on record the attached list of cases where the revisionist company and or its sister concerns and its directors and or their family members are facing trial in several cheque dishonour cases.*

*I further say that it is apparent from the record that the revisionists have further committed the offence of criminal perjury by falsifying on oath before the learned trial court for which appropriate proceeding under Section 340 Cr.P.C is pending. It is a settled law that perjury is a serious criminal offence which cannot be compounded or remedial in law.*

*That I say that the cheque in question was dishonoured in November, 2016. Due to the same, I and my self proprietary firm (M/s Ultracon International) had since 2016 been deprived of access to the cheque amount. Infact, due to the lack of access to my own funds for a period of approximately eight years, my business has suffered severe financial losses and I have been mentally harassed multiple times, due to the brazen criminal conduct of the revisionists. I say that the*

*said loss of my youth, opportunities and reputation, aggravated by the prolonged litigation cost, cannot be quantified in monetary terms.”*

(11). From the above, it can be safely inferred that the total number of the accused are four. Respondent No.2 is the company and respondents No.3 to 5 are its directors. All the respondents-accused have appeared before the trial court and are on bail. Out of four accused, two accused are female. It is also pertinent to mention here that this complainant had also settled one dispute relating to the cheque by way of compromise after receiving the cheque amount + interest @ 6% P.A.. 20. The respondent No.5 in her affidavit, has offered to make the payment of Rs.42,70,000/- or any other amount, specified by the court. The petitioner-complainant is adamant in his approach not to accept the offer and bury the hatchet and during the course of proceedings, stated that jail is remedy to sort out the dispute like present one.

(12). It is necessary to highlight that dishonour of cheque and its compensatory aspect of the remedy, should always be given priority over the punitive aspect. There is also some support for the apprehensions raised that a majority of 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. Another aspect to be borne in mind is 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. This view of mine finds support from the view taken by the Apex Court in **Damodar S. Prabhu's** case.

(13). The Parliament in its own wisdom under Section 138 of NI Act has provided the punishment upto two years or with fine which may extend to twice the amount of cheque amount or with both meaning thereby, the Parliament has not stated that imprisonment should be in the shape of rigorous imprisonment. Out of the fine amount, the compensation can be paid to the complainant. Thus, the emphasis is more on the reformatory aspect rather than punitive aspect.

(14). More emphasis should be given on the reformatory aspect of the accused involved in the commission of crime. The offence punishable under Section 138 of N.I Act is primarily a civil wrong. The courts all over India under the banner of National Legal Services Authority and State Legal Services Authority concerned use to hold Lok Adalats for settling the disputes like present one. Under Section 165 of Indian Evidence Act, the courts have to be proactive to find out the ultimate truth and to bring the litigation to its logical end.

(15). This Court is of the opinion that the revisional court has not committed any illegality in directing the parties to persuade to settle the dispute or to enhance the amount of settlement in the manner indicated above. The approach of the petitioner-complainant in not settling the dispute and taking a technical objection of 'consent' before compounding of offence leave only one impression on this Court as to cantankerous nature of the petitioner to elongate the dispute till the respondents are sent to jail. So much

so, the respondents No.2 to 5 have deposed and have fairly come forward to settle the dispute mutually. There can be no better alternative than settlement.

(16). The rigidity and obdurateness as is depicted from the affidavit of the petitioner-complainant, reproduced above, leads to only one conclusion that the petitioner-complainant is wantonly in harassment spree and that cannot be allowed at the cost of already piling litigation under which the Courts are reeling. There is need to encourage the litigants in cheque dishonoured cases, to opt for compounding during early stages of litigation to ease choking of the criminal justice system for graded scheme of imposing cost on parties who unduly delay compounding of offence and for controlling of filing of complaints in multiple jurisdiction relatable to same transactions.

(17). There is thus no merit in this writ petition and the same is dismissed with cost of Rs.25,000/-.

(18). Ordered accordingly.

15.03.2024  
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)  
Judge

Yes/No  
Yes/No