

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-88-2021 (O&M)
Decided on 24.05.2024

Jyoti Bansal

... Petitioner

VS.

Raj Kumar

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Gupta, Advocate for the petitioner

Mr. SS Gopera, Advocate for
Mr. JS Khiva, Advocate for the respondent

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the judgment and order dated 22.01.2021 passed by Additional Sessions Judge, Mansa as well as the judgment and order dated 08.12.2018 passed by Addl. Chief Judicial Magistrate, Mansa vide which the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) and sentenced to undergo RI for one year with fine of Rs.500/-.

(2). Notice of motion in this case was issued on 04.02.2021 and since the petitioner was ready to refund the amount of Rs.49,500/- and brought a demand draft, in that regard, to show his *bona fide*, this Court, as an interim measure, ordered to suspend the sentence of the petitioner.

(3). Thereafter, an application i.e. CRM-6441-2024 was filed under 147 of the NI Act read with Sections 320 & 482 CrPC seeking to compound the offence and submitted that the petitioner does not want to challenge his conviction on merits. Keeping in view the fact that the parties have amicably

settled the dispute, this court vide order dated 04.04.2024, called for the report of the trial court to this effect.

(4). Thereafter, a report dated 26.04.2024 was received from the trial court wherein the factum of the parties entering into a settlement has been conceded. A copy of the compromise deed dated 05.03.2024 (Annexure A1 with CRM-11354-2024) *inter se* parties is also on record. There is no objection from the respondent against allowing the present revision petition.

(5). Since a specific provision is enshrined under Section 147 of the NI Act for compounding of the offence, there could be no reason as to why the same cannot be permitted even after conviction, which had been affirmed upto the High Court. Moreover, in order to facilitate settlement of disputes, Section 147 was inserted which came into effect from 6th February, 2003, and provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under the Act would be compoundable. Section 147 of NI Act is reproduced as under:-

“147. Offences to be compoundable. –

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be compoundable.”

(6). Reliance can be placed upon the judgment of Apex Court rendered in the case of **“O.P. Dholakia vs. State of Haryana & Anr.” [(2000) 1 SCC 762]**, wherein it was held that since the petitioner had already entered into a compromise with the complainant and the complainant had appeared through counsel and stated that the entire money had been received by him and he had no objection if the conviction already recorded under Section 138 of the

Negotiable Instruments Act is set aside, the Hon'ble Judges thought it appropriate to grant permission, in the peculiar facts and circumstances of the case, to compound the offence. While doing so, this Court also indicated that necessarily the conviction and sentence under Section 138 of the Act stood annulled.

(7). The said view has been consistently followed in the following cases; (1) *Anil Kumar Haritwal & Anr. vs. Alka Gupta & Anr.* [(2004) 4 SCC 366]; (2) *B.C. Seshadri vs. B.N. Suryanarayana Rao* [2004 (11) SCC 510] decided by a three Judge Bench; (3) *G. Sivarajan vs. Little Flower Kuries & Enterprises Ltd. & Anr.* [(2004 11 SCC 400]; (4) *Kishore Kumar vs. J.K. Corporation Ltd.* [(2004 13 SCC 494]; (5) *Sailesh Shyam Parsekar vs. Baban* [(2005 (4) SCC 162]; (6) *K. Gyansagar vs. Ganesh Gupta & Anr.* [(2005) 7 SCC 54]; (7) *K.J.B.L. Rama Reddy vs. Annapurna Seeds & Anr.* [(2005) 10 SCC 632]; (8) *Sayeed Ishaque Menon vs. Ansari Naseer Ahmed* [(2005) 12 SCC 140]; (9) *Vinay Devanna Nayak vs. Ryot Sewa Sahakari Bank Ltd.* [(2008) 2 SCC 305], wherein some of the earlier decisions have been noticed; and (10) *Sudheer Kumar vs. Manakkandi M.K. Kunhiraman & Anr.* [2008 (1) KLJ 203], which was a decision of a Division Bench of the Kerala High Court, wherein also the issue has been gone into in great detail.

(8). The golden thread in all these decisions is that once a person is allowed to compound a case as provided for under Section 147 of the Negotiable Instruments Act, the conviction under Section 138 of the said Act should also be set aside.

(9). In *Vinay Devanna Nayak* (supra), the issue was raised and after taking note of the provisions of Section 320 Cr.P.C., it was held that since the

matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of conviction and sentence recorded by all the courts were set aside and the appellant was acquitted of the charge leveled against him.

(10). In view of the non-obstante clause, the provisions of Section 147 are given an overriding effect over the Code and in view of the clear mandate given to the parties to compound an offence under the NI Act, reference to Section 320 Cr.P.C. can be made for purposes of comparison only in order to understand the scope of Section 147 of the Negotiable Instruments Act.

(11). The object of Section 320 Cr.P.C., which would not *strictu sensu* apply to a proceeding under the NI Act, give the parties to the proceedings an opportunity to compound such offences as mentioned in the said section, with or without the leave of the Court, and also vests the court with jurisdiction to allow such compromise. By virtue of Sub-Section (8), the Legislature has taken one step further in vesting jurisdiction in the Court to also acquit the accused/convict of the offence on the same being allowed to be compounded. Inasmuch as, it is with a similar object in mind that Section 147 has been inserted into the Act of, 1881, by amendment, an analogy may be drawn as to the intention of the Legislature as expressed in Section 320(8) Cr.P.C., although, the same has not been expressly mentioned in the amended section to a proceeding under Section 147 of the aforesaid Act.

(12). As far as the non-obstante clause included in Section 147 of the Act of 1881 is concerned, the Act of 1881 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.

(13). Since the parties have settled their disputes, in keeping with the spirit of Section 147 of the NI Act, this petition is allowed and the judgment and order dated 22.01.2021 passed by Additional Sessions Judge, Mansa as well as the judgment and order dated 08.12.2018 passed by Addl. Chief Judicial Magistrate, Mansa are set aside and the parties to permitted to compound the offence and resultantly, the petitioner stands acquitted.

24.05.2024
V.Vishal

(Sandeep Moudgil)
Judge

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |