

234 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1068-2023 (O & M)

Date of decision: 26.02.2024

RAJINDER NANDA

...PETITIONER

V/S

MAHINDER KUMAR AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Pallavi Babbar, Advocate for the petitioner.

Mr. Kushager Goyal, Advocate for respondent No.1.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

CRM-18257-2023

The instant application is filed under Section 482 Cr.P.C. read with Section 147 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act') and Section 320 of Cr.P.C. seeking permission to compound the offence under Section 138 of the Act.

Learned counsel for the parties submit that with the intervention of the respectable, the matter has been compromised between the parties and a prayer for compounding is made in view of the ratio of law laid down in ***Damodar S. Prabhu Versus Sayad Babulal (2010) 5 SCC 663.***

Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the following order was passed on 25.04.2023 :

"CRR-1068-2023

Learned counsel for the petitioner submits that the parties have reached an amicable settlement by way of compromise dated 19.04.2023, a copy of which is on record as Annexure A-2.

According to the terms of the same, the complainant has been paid a sum of Rs.5 lacs, over and

above, the amount deposited before the Courts below. Thus, in all, the complainant has been paid a sum of Rs.6.7 lacs against cheque value of Rs.5 lacs. The petitioner also undertakes to pay 15% of the cheque amount in accordance with Damodar S. Prabhu Vs. Sayed Badalal, 2010 (5) SCC 663.

Notice of motion.

Mr. Himmat Singh, DAG, Haryana, accepts on behalf of respondent No.2 and waives service.

Mr. Kushager Goyal, Advocate, puts in appearance and accepts notice on behalf of respondent No.1 and waives service.

Learned counsel for respondent No.1 admits the factum of compromise.

Adjourned to 17.07.2023 to enable the petitioner to make payment of 15% of the cheque amount in accordance with Damodar S. Prabhu (supra).

CRM-18255-2023

This application has been has been filed for suspension of the remaining sentence of the applicant.

Learned counsel for the applicant submits that since, the offence has been compounded, the remaining sentence of the applicant deserves to be suspended.

Notice of the application.

Mr. Himmat Singh, DAG, Haryana, accepts on behalf of respondent No.2 and waives service.

Mr. Kushager Goyal, Advocate, puts in appearance and accepts notice on behalf of respondent No.1 and waives service and has no objection, in case, the remaining sentence of the applicant is suspended.

Thus, the applicant is granted interim bail till the next date of hearing subject to furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Judicial Magistrate, concerned.

Adjourned to 17.07.2023.

CRM-18257-2023

This application has been filed for permission to compound the offence. Notice of the application.

Mr. Himmat Singh, DAG, Haryana, accepts on behalf of respondent No.2 and waives service.

Mr. Kushager Goyal, Advocate, puts in appearance and accepts notice on behalf of respondent No.1 and waives service.

Adjourned to 17.07.2023.”

In view of the above order and in view of **Damodar S. Prabhu** (*supra*), the instant application is allowed.

CRR-1068-2023

The present revision petition is filed against the judgment dated 22.01.2020, passed by learned Judicial Magistrate Ist Class, Karnal in Criminal Complaint No.3931 of 2018, whereby the petitioner was convicted to undergo rigorous imprisonment for a period of one year and was also ordered to pay an amount of Rs.6,00,000/- to the complainant within a period of 60 days and judgment dated 11.04.2023 passed by learned Additional Sessions Judge, Karnal, vide which, the criminal appeal No.16 of 2020 was dismissed and the judgment of learned Judicial Magistrate Ist Class was upheld.

2. Briefly, the facts are that the petitioner availed a friendly loan of Rs.5,00,000/- from respondent No.1/complainant being relative with an undertaking to repay it after some time. However, the petitioner defaulted in repayment of the loan amount and therefore, on repeated request of respondent No.1/complainant, the petitioner issued cheque bearing No.113927 dated 20.06.2018 for Rs.5,00,000/- in his favour to discharge the liability with the assurance of encashment on presentation. Accordingly, the complainant presented the cheque with the banker of the petitioner but the same returned with the remarks “Account Closed” vide cheque returning memo dated

27.06.2018. The respondent No.1/complainant got served legal notice upon the

accused calling upon him to pay the cheque amount within 15 days of the date of receipt of the notice. However, the petitioner neither replied to the notice nor paid the amount and the instant complaint was registered.

3. Learned counsel for the petitioner as well as learned counsel for respondent No.1 submit that with the intervention of the respectable, the matter has been compromised between the parties and *ad idem* that respondent No.1-complainant has been adequately compensated and he has already received an amount of Rs.6.7 lacs against the cheque value of Rs.5 lacs and the petitioner has also deposited the cost of Rs.75,000/- on 25.04.2023 before the Haryana State Legal Services Authority, Panchkula and the parties have no objection in case the present revision petition is allowed and complaint is quashed.

4. It is settled law that the proceedings initiated under Section 138 of the NI Act are quasi-criminal in nature and the object and purpose of this enactment is to provide a compensatory mechanism for expeditious recovery of money as opposed to punishing the accused. A two Judge Bench of the Hon'ble Supreme Court in ***R. Vijayan Vs. Baby (2012) 1 SCC 260*** has considered the said issue and come to the conclusion that punishing the offender is a secondary concern.

5. The amendment carried out in the year 2002 in the NI Act intended to make the nature of offence under Section 138 of the NI Act as a civil wrong while making it compoundable. A two Judge Bench of the Hon'ble Supreme Court in ***Meters and Instruments Private Limited and another Vs. Kanchan Mehta (2018) 1 SCC 560***, speaking through Justice A.K. Goel has held as under:-

“7. 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..... xxxx xxxx

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."

6. A two Judge Bench of the Hon'ble Supreme Court in ***JK Industries Limited and others Vs. Amar Lal V. Jumani and another (2012) 3 SCC 255*** has examined the issue whether for compounding of an offence, consent of aggrieved party is required and speaking through Justice Asok Kumar Ganguli, following was held:-

"82. A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of Section 147 in the NI Act,

the entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence under the NI Act, in that case the compounding of offence under the NI Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under the NI Act. Therefore, Section 147 of the NI Act must be reasonably construed to mean that as a result of the said section the offences under the NI Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of the NI Act.”

7. In ***M/s Meters and Instruments Pvt. Ltd. (supra)***, the Hon’ble Supreme Court has held that in the interest of justice, on being satisfied that the complainant has been adequately compensated, the proceedings under Section 138 of the NI Act can be quashed even in the absence of consent of the complainant.
8. In view of the above discussion, the present petition is allowed. The offence under Section 138 of the NI Act is compounded and the petitioner stands acquitted of the notice of accusation presented against him. The impugned judgments of conviction and order of sentence are set aside. Bail bonds and surety bonds of the petitioner also stand discharged.
9. Pending application(s), if any, also stand(s) disposed of.

February 26, 2024

manisha

(HARPREET SINGH BRAR)
JUDGE

(i) Whether speaking/reasoned

Yes/No

(ii) Whether reportable

Yes/No