



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23586-2024 (O&M)
Date of order: 15.05.2024

Cosmos Sanjay Weaving Mills Pvt. Ltd. & another
... Petitioner(s)
Versus
M/s Kandhari Dyes and Chemicals
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Umesh Aggarwal, Advocate
for the petitioner(s).

ANOOP CHITKARA, J.

Complaint No.	Dated	Court	Sections
NACT/882/2023	9.3.2023	Judicial Magistrate Ist Class, Amritsar	138 of the Negotiable Instruments Act, 1881

Seeking quashing of above-captioned complaint, the petitioners have come up before this Court under Section 482 CrPC.

2. The nature of the order this Court proposes to pass, neither any notice is required to be issued to the respondent(s) nor any response is called for from the respondent(s). This Court has *prima facie* examined whether the matter deserves issuance of notice to the respondent(s) or not and has heard counsel for the petitioners in this regard.
3. Petitioners’ counsel submits that although the petitioner no.1-company is willing to settle their disputes but there are some people having vested interests who are creating obstacles and are not letting such compromise get materialized, because they want a cut for their part for such compromise. He further submits that since petitioner no.1 is a company, some unscrupulous people want a share while settling the dispute between petitioner no.1-company and petitioner no.2 Pawan Kumar vis-à-vis the complainant. He further submits that if this Court issues notice and sends this matter for mediation, then a compromise can take place.
4. It will be relevant to reproduce Section 147 of the Negotiable Instruments Act, 1881, which reads as under: -



147. Offences to be compoundable.—

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

5. A perusal of Section 147 of the Negotiable Instruments Act, 1881, would reveal that the same provides for the compounding of an offence under the Act. However, the provision under Section 147 of the Negotiable Instruments Act, 1881, unlike the corresponding provision for compounding of offences as prescribed under Section 320 Cr.P.C. does not elaborate upon the manner in which offences should be compounded.

6. Thereafter, the question as to whether the consent of the complainant would be necessary for compounding was first dealt by the Hon'ble Supreme Court in ***JK Industries Limited & Ors. v. Amarlal V. Jamuni & Anr, (2012) 3 SCC 255***, wherein the Hon'ble Supreme Court ***had observed that consent was necessary***. Relevant extract is as follows:

58. Relying on the aforesaid non obstante clause in Section 147 of the NI Act, the learned counsel for the appellant argued that a three-Judge Bench decision of this Court in Damodar [(2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328], held that in view of non obstante clause in Section 157 of the NI Act, which is a special statute, the requirement of consent of the person compounding in Section 320 of the Code is not required in the case of compounding of an offence under the NI Act.

59. This Court is unable to accept the aforesaid contention for various reasons....."

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89. 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. Hon'ble Supreme Court has in ***Raj Reddy Kallem v. State of Haryana, 2024 INSC 347***, recently settled the law, by stating that offences under Negotiable Instruments Act, 1881 cannot be compounded without the consent of the Complainant. It was observed as follows:

*"In our opinion, Kanchan Mehta (supra) nowhere contemplates that 'compounding' can be done without the 'consent' of the parties and even the above observation of Kanchan Mehta (supra) giving discretion to the trial court to 'close the proceedings and discharge the accused', by reading section 258[1] of CrPC, has been held to be 'not a good law' by this Court in the subsequent 5 judges bench judgement in ***Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, (2021) 16 SCC 116***.*

All the same, in this particular given case even though the complainant has been duly compensated by the accused yet the complainant does not agree for the compounding of the offence, the courts cannot compel the complainant to give 'consent' for compounding of the matter. It is also true that mere repayment of the amount cannot mean that the appellant is absolved from the criminal liabilities under Section 138 of the NI Act. But this case has some peculiar facts as well. In the present case, the appellant has already been in jail for more than 1



year before being released on bail and has also compensated the complainant. Further, in compliance of the order dated 08.08.2023, the appellant has deposited an additional amount of Rs.10 lacs. There is no purpose now to keep the proceedings pending in appeal before the lower appellate court. Here, we would like to point out that quashing of a case is different from compounding. This Court in JIK Industries Ltd.[3](Supra) distinguished the quashing of case from compounding in the following words:

"Quashing of a case is different from compounding. In quashing the court applies it but in compounding it is primarily based on consent of the injured party. Therefore, the two cannot be equated."

8. Section 258 CrPC, 1973 also does not apply to Negotiable Instruments Act, 1881, which on its own has no provision for discharging the accused, based on compounding of offence. If the petitioners-accused want the matter to be compromised, needless to say that they have to settle the matter with the respondent/complainant(s).
9. It is clarified that if any person tries to take any commission for settlement or any other benefit, directly or indirectly, in lieu of such compromise, it shall be permissible for petitioner no.2 to file a complaint in the Police Station and the such police station after conducting preliminary inquiry, will proceed in accordance with law and take action against such unscrupulous extortionists.
10. Given above, in case the petitioner(s)/accused or the complainant(s) file any application(s) for compromise, the concerned Magistrate is requested to ensure that the compromise is taken place without any undue influence but out of free will and consent of the parties. In case the complainant makes any allegation about demand or payment of money by anyone for compromise, and the concerned Court comes to the conclusion that such allegation is true, it may proceed in accordance with law, so that such unscrupulous elements are brought to book.
11. Given the statutory limitations under the Negotiable Instrument Act and non-application of Section 258 CrPC, this Court can only intervene to the extent mentioned above.
12. Resultantly, the present petitions are disposed of. All pending applications, if any, stand disposed.
13. Photocopy of this order be placed on the file of each connected case.

(ANOOP CHITKARA)
JUDGE

May 15, 2024
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Whether speaking/reasoned	:	Yes
Whether reportable	:	No