271 IN THE HIGH COURT OF PUNJAB ANND HARYANA
CHANDIGARH

CRM-M-56396-2022
Date of Decision: 06.02.2024

SANDEEP KUMAR

......Petitioner

versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

***

Present: Mr. Nipun Bhardwaj, Advocate
for the petitioner

Mr. Saurabh Bhardwaj, Advocate
for respondent no.2-complainant

Mr. Vikas Bharadwaj AAG Haryana

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<u>HARPREET SINGH BRAR J. (Oral)</u>

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of the following on the basis of settlement/compromise in the shape of 'No Dues Certificate' dated 04.11.2022 (Annexure P-6): -

- Judgement of conviction dated 21.12.2016 and order of sentence dated 23.12.2016 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Hisar in criminal complaint no.387-II of 2016 dated 04.03.2016 filed under Section 138 of the Negotiable Instruments Act, 1881, whereby, the petitioner has been sentenced to undergo simple imprisonment for one year and to pay the cheque amount as compensation to the complainant, and
- Order dated 15.11.2019 (Annexure P-2) passed by the learned Additional Sessions Judge, Hisar, whereby, the appeal filed by the petitioner against the abovesaid judgement of conviction has been dismissed, and

- Order dated 25.11.2021 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Hisar vide which the petitioner has been declared a 'proclaimed person' as well as subsequent FIR No.209 (Annexure P-5) dated 07.05.2022 under Section 174-A IPC registered at Police Station Urban Estate, Hisar.

FACTUAL MATRIX

2. The facts, in brief, are that the petitioner was granted a KCC loan of Rs.12,80,000/- and a term loan of Rs.6,40,000/- by respondent no.2-complainant Bank. As per the loan agreement, the KCC loan was agreed to be repayable after every half year and the term loan in half yearly installments. In order to discharge his said legal liability towards respondent no.2 Bank, the petitioner issued a cheque bearing no.064312 dated 21.01.2016 of Rs.12,80,000/- drawn on HDFC Bank, Hisar. Upon its presentation for encashment, the said cheque was dishonoured vide bank memo dated 02.02.2016 with remarks 'Insufficient Funds'. Thereafter, a legal notice dated 02.02.2016 was issued to the petitioner by respondent no.2, calling upon him to make the requisite payment. However, the petitioner failed to repay the requisite amount and aggrieved by the same, respondent no.2 preferred the above-mentioned complaint.

3. The learned trial Court after appreciating the evidence on record, concluded that the aforesaid cheque was issued by the petitioner in favour of respondent no.2 bank in discharge of legally enforceable liability and the necessary ingredients under Section138 being made out, thereby, convicted the petitioner of the aforesaid offence and sentenced him to undergo simple imprisonment for a period of one year along with compensation to the tune of the aforesaid cheque amount (12,80,000/-) to be paid to respondent no.2. The petitioner was further

ordered to undergo simple imprisonment for a period of three months in case of default on payment of the compensation amount.

4. The petitioner preferred an appeal against the abovesaid conviction and sentence which was dismissed by the lower Appellate Court vide order dated 15.11.2019 (Annexure P-2), upholding the abovesaid judgement of conviction and order of sentence. Since, the petitioner was absent from the Court on 15.11.2019, the learned lower Appellate Court also issued direction to the learned trial Court to issue process against the petitioner to apprehend him and to implement the impugned judgement of conviction and order of sentence.

5. The petitioner, aggrieved by the abovesaid orders of the learned Courts below, filed a revision petition before this Court which was dismissed vide order dated 09.09.2021 (Annexure P-3).

6. When the mandatory period of 30 days from the date of issuance of proclamation against the petitioner expired and he still did not put in his appearance before the learned trial Court, he was declared as 'proclaimed person' vide order dated 25.11.2021. In compliance of this order, the above-mentioned impugned FIR No. 209 dated 07.05.2022 came to be registered against the petitioner. Aggrieved, the petitioner has approached this Court by way of the present petition.

CONTENTIONS

7. The learned counsel for the petitioner *inter alia* contends that the petitioner has repaid the entire due amount to respondent no.2 Bank due to which respondent Bank has issued a 'No Dues Certificate' dated 04.11.2022 (Annexure P-6) in favour of the petitioner. Even the land mortgaged by the petitioner before respondent no.2 Bank has been released. He further places reliance on the law laid

down in the case titled **Damodar S.Prabhu Vs. Sayed Babalal H (2010) 5 SCC 663**.

8. Learned counsel for respondent no.2 Bank affirms the factum of compromise between the parties as mentioned in the reply dated 12.12.2022 submitted by way of an affidavit on behalf of respondent no.2-complainant bank by Jatinder Mishra, Assistant Manager (Legal, Agri.), HDFC Bank Ltd., Regional Office, Chandigarh (U.T.) duly authorized power of attorney holder of the bank. He further reiterates that bank has recovered the full and final payment as per settlement and the accounts of the petitioner-accused has been closed. He further submits that respondent no.2 has no objection if the offence in the present case is compounded in view of the settlement/compromise.

ANALYSIS & OBSERVATION

9. 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 secondary concern.

10. 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 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."

11. A two Judge Bench of the Hon'ble Supreme Court in **JIK 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."

12. 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.

CONCLUSION

13. After giving my thoughtful consideration to the submissions put forth by all sides and on careful perusal of the material on record, this Court is inclined to accept the prayer made by the petitioner.

14. In view of the above discussion, especially the fact that the matter has been settled and complete settlement amount has been repaid, the present petition is allowed and the impugned Judgement of conviction dated 21.12.2016 and order of sentence dated 23.12.2016 (Annexure P-1), Order dated 15.11.2019 (Annexure

P-2) passed by the lower Appellate Court and Order dated 25.11.2021 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Hisar vide which the petitioner has been declared a 'proclaimed person' as well as the subsequent FIR No.209 (Annexure P-5) dated 07.05.2022 under Section 174-A of IPC registered at Police Station Urban Estate Hisar stand quashed. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

06.02.2024
Ajay Goswami

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*