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IN THE HIGH COURT OF PUNJAB ANND HARYANA CHANDIGARH

CRM-M-56325-2023
Date of Decision: 07.03.2024

ANKIT SINGLA AND ANOTHER

...Petitioners

versus

ASHWANI KUMAR ASHOK KUMAR PVT LTD

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rohan Garg, Advocate
for the petitioners

Mr. Ajay Jain, Advocate
for the respondent

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HARPREET SINGH BRAR J. (Oral)

1. The petitioners have approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of the criminal complaint No. NACT/8497/2022 titled ‘Ashwani Kumar Ashok Kumar Pvt Ltd vs Ankit Singla & Anr.’ filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) pending before the learned Judicial Magistrate Ist Class, Hisar as well as the summoning order dated 18.05.2022 in the said complaint.

2. The facts, in brief, are that petitioner no.1 being the partner of petitioner no.2-firm purchased steel pipes from the respondent firm (through its authorized signatory Sanjay Kumar Aggarwal) between the period of 01.04.2019 to 22.02.2022. In lieu of the aforesaid transactions, an amount of Rs.7,01,726/- was found to be outstanding against the petitioners and in order to partly discharge the said liability, the petitioners issued a cheque bearing No.000504 dated 01.03.2022

for Rs.1,00,000/- in favour of the respondent firm. Upon presentation for encashment, the said cheque was dishonoured vide memo dated 04.04.2022 with endorsement 'Funds Insufficient'. Thereafter, the respondent-complainant served a legal notice upon the petitioners calling upon them to make the said cheque payment but the petitioners failed to make the said payment. Aggrieved, the respondent filed the complaint (supra) in which the petitioners were summoned vide the impugned order dated 18.05.2022 to face trial under Section 138 of the NI Act. Thereafter, the petitioners have approached this Court by way of the present petition.

3. The learned counsel for the petitioners *inter alia* submits that in consequence of the submissions made by him before this Court on 08.11.2023, the petitioner has deposited an amount of Rs.1,10,000/- on 22.11.2023, i.e., the cheque amount along with 10% of it as compensation, before the Registry of this Court vide Demand Draft No.000279 dated 21.11.2023 issued by HDFC Bank. To support the same, he points to the receipt No.3391, already on record in the paper-book, issued by the Superintendent of this Court on 22.11.2023.

4. Learned counsel for the respondent complainant submits that he has no objections to the compounding of the offence alleged against the petitioner in the present case if the abovesaid amount claimed to have been deposited by the learned counsel for the petitioners is released to the respondent.

5. After giving my thoughtful consideration to the submissions put forth by all sides and on careful perusal of the material on record, it transpires that the petitioner has deposited the abovesaid amount with the Registry of this Court. Hence, this Court is inclined to accept the prayer made by the petitioners.

6. pertinently, 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*
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> *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.*
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> *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."*

7. In view of the above discussion, the present petition is allowed and consequently, the complaint bearing No. NACT/8497/2022 titled 'Ashwani Kumar Ashok Kumar Pvt Ltd vs Ankit Singla & Anr.' filed under Section 138 of the Negotiable Instruments Act, 1881 pending before the learned Judicial Magistrate

Ist Class, Hisar as well as the summoning order dated 18.05.2022 are hereby set aside.

8. The Registry of this Court is directed to release the amount of Rs.1,10,000/- deposited by the petitioner, in the present case, to the respondent within 2 weeks of this order.

9. Needless to say, nothing observed by this Court in the present case shall be construed to cause any prejudice against the respondent to recover the remaining amount by way approaching the concerned Civil Court or any other appropriate forum.

10. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

07.03.2024
Ajay Goswami

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