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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 22nd February, 2024***

\+ CRL.REV.P. 221/2024

SHYAM SUNDAR ..... Petitioner

Through: Mr. Gopal Jha and Mr. Azad K. Mishra, Advocates.

versus

STATE (NCT) OF DELHI AND ANR ..... Respondents

Through: Mr. Digam Singh Dagar, APP for State.

Respondent No. 2 in person.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CRL.M.A. 5089/2024 and 5128/2024 (Exemptions)

1. Allowed, subject to all just exceptions.

2. Applications stand disposed of.

CRL.M.A. 5090/2024 (delay of 14 days)

3. For the reasons stated in the application, the same is allowed.

4. Delay of 14 days in filing the appeal is condoned.

5. Application stands disposed of.

CRL.REV.P. 221/2024 & CRL.M. (BAIL) 292/2024 (suspension of sentence)

6. Present revision petition has been filed on behalf of the Petitioner Shyam Sundar S/o Sh. Girdhari under Section 397 read with Section 401

Cr.P.C. seeking setting aside of the impugned judgment dated 16.11.2019 and order on sentence dated 18.07.2023 passed by the learned M.M.-02, Shahdara, Karkardooma, Delhi as well as the judgment dated 19.10.2023 passed by Special Judge (NDPS Act), Shahdara, Karkardooma Courts, Delhi in Criminal Appeal No. 163/2023. By judgment dated 16.11.2019, Petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') and was sentenced vide order on sentence dated 18.07.2023 to simple imprisonment of one year and to pay fine amounting to Rs.4,50,000/- (after deducting Rs.40,000/- already paid by the Petitioner to the Complainant during the proceedings), i.e. Rs.4,10,000/- as compensation under Section 357(1) Cr.P.C. within 30 days of the order, failing which to undergo simple imprisonment of further three months.

7. Petitioner was admitted to bail and granted 30 days to file appeal subject to furnishing bail bond and surety bond in the sum of Rs.20,000/- each. Petitioner filed appeal against conviction and sentence, which was dismissed by the learned Appellate Court by order dated 19.10.2023, holding that once the Petitioner in his statement under Section 313 Cr.P.C. stated that he had paid back Rs.1,00,000/- to the Complainant and agreed to pay Rs.1,60,000/- in the settlement before the Mediation Centre, it was proved that he had taken the loan amount of Rs.2,60,000/- from the Complainant. Petitioner was thus taken into custody and continues in judicial custody till date.

8. It is an admitted position that Petitioner and Respondent No.2/Complainant have amicably resolved all their disputes and settled the matter for a total amount of Rs.2,20,000/-. Affidavit of the Complainant has been filed in support of the petition confirming that the matter has been

mutually settled between the parties and Petitioner shall pay Rs.2,20,000/- to Respondent No. 2 in full and final settlement subject to acquittal of the Petitioner from the charges in the present case and that Complainant shall co-operate in closing the present case.

9. Learned counsel for the Petitioner submits that the Complainant has out of his own free will settled the matter amicably with the Petitioner and this Court has power to permit the parties to settle and compromise the matter despite conviction. Petitioner has been prosecuting this case since 2016 and has undergone immense harassment, agony apart from financial issues. He is old and suffering from different ailments and therefore, it is urged that a lenient view be taken and while setting aside the impugned judgments and order on sentence, cost may not be imposed towards compensation.

10. Respondent No. 2 is present in Court and has handed over a photocopy of his Aadhar card as proof of his identity, which is taken on record. He acknowledges the receipt of Rs.2,20,000/- in Court today by way of Demand Draft bearing No. 722139 dated 21.02.2024 drawn on Punjab National Bank, Vaishali, Ghaziabad, U.P., copy of which is also taken on record. Complainant further submits that he has already filed an affidavit giving 'No Objection' in support of the present petition and reiterates that the petition be allowed as the disputes between the parties have been amicably settled.

11. It is no longer *res integra* that this Court is empowered to set aside the conviction in cases falling under Section 138 of the NI Act in light of an amicable settlement between the Complainant and the accused and in this context, I may refer to a judgment of the Supreme Court in ***K.M. Ibrahim v.***

K.P. Mohammed and Another, (2010) 1 SCC 798, relevant passages from which are as follows:-

> ***"9.*** *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. In Vinay Devanna Nayak [(2008) 2 SCC 305 : (2008) 1 SCC (Cri) 351] , the issue was raised and after taking note of the provisions of Section 320 CrPC, this Court 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 was set aside and the appellant was acquitted of the charge levelled against him.*
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> ***10.*** *The object of Section 320 CrPC, which would not in the strict sense of the term apply to a proceeding under the Negotiable Instruments Act, 1881, gives the parties to the proceedings an opportunity to compound offences mentioned in the table contained 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.*
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> ***11.*** *Inasmuch as, it is with a similar object in mind that Section 147 has been inserted into the Negotiable Instruments Act, 1881 by amendment, an analogy may be drawn as to the intention of the legislature as expressed in Section 320(8) CrPC, although, the same has not been expressly mentioned in the amended section to a proceeding under Section 147 of the aforesaid Act.*
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> ***12.*** *Apart from the above, this Court is further empowered under Article 142 of the Constitution to pass appropriate orders in line with sub-section (8) of Section 320 CrPC in an application under Section 147 of the aforesaid Act, in order to do justice to the parties.*
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> ***13.*** *As far as the non obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act 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. The various decisions cited by Mr Rohatgi on this issue do not add to the above position.*
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> ***14.*** *It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been*

> *concluded before the appellate forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.*
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> ***15.*** *Since the parties have settled their disputes, in keeping with the spirit of Section 147 of the Act, we allow the parties to compound the offence, set aside the judgment of the courts below and acquit the appellant of the charges against him."*

12. Keeping in view the settlement between the parties and the admitted fact that the settlement amount has been received by the Complainant, this Court sees no legal impediment in allowing the present petition. Accordingly, the impugned judgment convicting the Petitioner as well as the order on sentence and the judgment in appeal are set aside.

13. The Supreme Court in ***Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663,*** has delineated the guidelines for payment of costs in the event the offence under Section 138 of the NI Act is compounded. The costs have to be determined on the basis of the stage of proceedings, at which the settlement is arrived between the parties. As a general principle, High Court is required to impose costs of 15% of the cheque amount *albeit* the High Court is empowered to impose lesser costs, in its discretion, in the given facts of the case. On this aspect, counsel for the Petitioner urges the Court not to impose any costs, as the Petitioner does not have the financial means to pay any amount, having already paid the settlement amount to the Complainant and having litigated since 2016. Keeping all factors in mind, no costs are imposed on the Petitioner.

14. Petitioner shall be released forthwith, if not wanted in any other case.

15. Petition is allowed and disposed of in the aforesaid terms. Pending

applications also stand disposed of.

16. Copy of the order shall be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

FEBRUARY 22, 2024/shivam