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

\+ **CRL.REV.P. 252/2024 & CRL.M.A. 17560/2024**

HIMANSHU BAROT .....Petitioner

Through: Mr. Tej Pratap & Ms. Illashree, Advocates for Revisionist alongwith Revisionist-in-Person.

versus

PARAS HOLIDAYS PRIVATE LIMITED & ANR. .....Respondents

Through: Mr. S.K. Jain, Advocate alongwith R-1/Complainant-in-Person/Naveen Jain.
SI Kailash (P.S. Karol Bagh).

\+ **CRL.REV.P. 253/2024 & CRL.M.A. 16744/2024**

HIMANSHU BAROT .....Petitioner

Through: Mr. Tej Pratap & Ms. Illashree, Advocates for Revisionist alongwith Revisionist-in-Person.

versus

PARAS HOLIDAYS PRIVATE LIMITED & ANR. .....Respondents

Through: Mr. S.K. Jain, Advocate alongwith R-1/Complainant-in-Person/Naveen Jain.
SI Kailash (P.S. Karol Bagh).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **31.07.2024**

CRL.M.A. 22493/2024 & CRL.M.A. 22143/2024

1. The present petitions are filed challenging the separate orders dated 14.02.2024 (hereafter '**impugned orders**'), passed

by the learned Appellate Court, in Criminal Appeal Nos. 93/2021 and 94/2021 respectively.

2. The learned Appellate Court, by the impugned order dated 14.02.2024, in Criminal Appeal No.93/2021, upheld the judgement on conviction dated 17.09.2021 and order on sentence dated 01.10.2021, passed by the learned Trial Court, in Complaint Case Nos. 524968/2016, whereby the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881(‘**NI Act**’) and sentenced to undergo imprisonment for a period of six months and to pay a fine of ₹7 lakhs, and in default of payment of fine, to undergo simple imprisonment for a further period of three months respectively.

3. The learned Appellate Court, by the impugned order dated 14.02.2024, in Criminal Appeal No.94/2021, upheld the judgement on conviction dated 17.09.2021 and order on sentence dated 01.10.2021, passed by the learned Trial Court, in Complaint Case No. 524445/2016, whereby the petitioner was convicted for the offence under Section 138 of the NI Act and sentenced to undergo imprisonment for a period of six months and to pay a fine of ₹3.5 lakhs, and in default of payment of fine, to undergo simple imprisonment for a further period of three months respectively.

4. It is averred that Respondent No.1/complainant filed the complaints under the provisions of the NI Act as the three cheques issued by the petitioner/ accused in discharge of his liability, for the amounts of ₹2,00,000/- each, were dishonoured on presentation and returned back with the remark – “funds insufficient”.

5. The learned counsel for the petitioner submits that the parties have settled their disputes by way of Settlement Deed

dated 12.07.2024 for a total amount of ₹8,50,000/-.

6. He submits that the petitioner had already deposited 20% of the total compensation amount in both the cases before the learned Appellate Court and another 20% of the compensation amount was deposited before this Court. He submits that the amount deposited before the learned Appellate Court has been released in favour of the complainant.

7. He submits that apart from the deposited amount, that is, ₹4,20,000/-, the remaining settlement amount of ₹4,30,000/- has been handed over to Respondent No.1 in Court by way of Demand Draft No. 516768 dated 11.07.2024, drawn on RBL Bank.

8. The Managing Director of Respondent No.1 and the petitioner are present in person. They have been duly identified by the respective counsel.

9. The Managing Director of Respondent No.1, on being asked, states that Respondent No.1 does not wish to pursue the proceedings emanating out of Complaint Case Nos. 524968/2016 and 524445/2016.

10. He states that the parties have amicably settled the dispute and Respondent No.1 has no objection if the proceedings under Section 138 of the NI Act are quashed.

11. Offence under Section 138 of the NI Act is compoundable in nature.

12. Even though an attempt for compounding of the offence under NI Act should be made at the initial stage rather than the later stage, however, there is no bar against seeking compounding of the offence even after conviction [Ref. ***Raj Reddy Kallem v. The State of Haryana & Anr.*** **: 2024 INSC 347**, ***K.M Ibrahim v. K.P Mohammed & Anr.*** **: (2010) 1 SCC**

798, etc.].

13. The Hon'ble Apex Court in the case of ***Damodar S. Prabhu v. Sayed Babalal H.* : (2010) 5 SCC 663** had highlighted that the compensatory aspect of the proceedings under the NI Act take precedence over the punitive aspect and stipulated certain guidelines for compounding the offences under the NI Act. The relevant portion of the judgment is reproduced hereunder:

> *"**4…** What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions.*
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> ***18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect.** There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice delivery. **The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute…***
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> ***21.** With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:*
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> ***THE GUIDELINES***
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> *(i) In the circumstances, it is proposed as follows:*
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> *(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the*

offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the court deems fit.

(c) ***Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.***

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

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25. *The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end."*

(emphasis supplied)

14. In the present case, the parties have settled the matter at the appellate stage. It is relevant to note that the complainant has duly consented to compounding the offence in the present case.

15. Out of the total settlement amount of ₹8,50,000/-, the amount of ₹4,30,000/- has already been handed over to Respondent No.1. It is stated that 20% of the amount that was deposited before the learned Appellate Court has been released in favour of Respondent No.1. Insofar as the remaining settlement

amount is concerned, in terms of settlement, the amount deposited before this Court is directed to be released in favour of Respondent No.1 on the strength of the present order.

16. In terms of ***Damodar S. Prabhu v. Sayed Babalal H.*** (*supra*), since the application for compounding has been made in revision, a cost of 15% of the total cheque amount (₹6,00,000/-) may be imposed. The learned counsel for the petitioner has requested that the cost may be reduced as the petitioner's business was dependent on travel to foreign countries, however, he hasn't been able to travel out of the country since after his sentence was suspended. He further submits that the petitioner has also spent more than a month in custody as well.

17. In view of the above, the present petitions are allowed and the impugned orders as well as well as the judgments on conviction dated 14.02.2024 and the orders on sentence dated 01.10.2021, passed in Complaint Case Nos. 524968/2016 and 524445/2016 respectively, are set aside, subject to the petitioner paying an amount of ₹50,000/- to the Delhi High Court Legal Services Committee, within a period of sixteen weeks from date.

18. Proof of deposit of cost to be submitted with the Registry of this Court.

19. The petitions are disposed of in the aforesaid terms.

20. The date already fixed, that is, on 22.08.2024, stands cancelled in both the matters.

21. Pending application(s) also stand disposed of.

22. A copy of this order be placed in both the petitions.

AMIT MAHAJAN, J

JULY 31, 2024/*'Aman'*