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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 308/2023 & CRL.M.A. 7623/2023,
CRL.M.A. 34330/2024

HINDUSTAN INFRASTRUCTURE
CONSTRUCTION CORP LTD AND ANRPetitioners
Through: Mr. Kanav Madnani, Adv.
P-2 in person.

versus

THE STATE GOVT OF NCT OF DELHI
AND ANR.Respondents
Through: Mr.Rajkumar, APP for the
State with SI Ramavtar,
PS Hauz Khas.
Mr. Pavan Kumar Sinha,
Director of R-2 in person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
05.12.2024

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1. The present petition is filed challenging the judgment dated 14.03.2023 (hereafter '**impugned judgment**'), passed the learned Additional Sessions Judge ('**ASJ**'), South District, Saket Courts, Delhi, in Criminal Appeal No. 321 of 2019.
2. The petitioner also challenges the judgment on conviction dated 27.07.2019 and order on sentence 31.07.2019, passed by the learned Metropolitan Magistrate ('**MM**'), South District, Saket Courts, New Delhi, in CC No. 462684/2016.
3. By judgment on conviction dated 27.07.2019, the learned MM convicted Petitioner No.1 and its directors, including Petitioner No.2, for the offence under Section 138 of the



Negotiable Instruments Act, 1881 ('NI Act'). By order on sentence dated 31.07.2019, the learned MM sentenced the accused persons as follows:

*"9...convict no.2, 3, & 4 are sentenced to **simple imprisonment for 3 months**. Convict no.1, 2, 3 & 4 are further directed to pay **compensation of Rs.17 lakhs** under Section 357(3) Cr.PC. within one month from today. The Convict no.1, 2, 3 & 4 shall be jointly and severally liable to pay the abovesaid compensation to the complainant. **In default of payment of the compensation to the complainant, the Convict no.2, 3 & 4 shall undergo further sentence of 4 months simple imprisonment.**"*

4. By the impugned judgment, the learned ASJ partly allowed the appeal and acquittal Convict No.3 and Convict No.4, who were the other directors of Petitioner No.1. The learned ASJ upheld the conviction of the petitioners and set aside the substantive sentence of three months of simple imprisonment imposed on Petitioner No.2. The fine amount of ₹17 lakhs was reaffirmed.

5. In the order dated 18.11.2024 passed by this Court, it was noted that the parties have settled their disputes for a total sum of ₹13.75 lakhs.

6. Petitioner No. 2, who is the Authorized Representative / Director of Petitioner No. 1 company, and Mr. Pavan Kumar Sinha, the Authorized Representative of Respondent No. 2 company, are present in person in Court and have been duly identified by their respective counsel.

7. Mr. Pavan Kumar Sinha (the Authorized Representative of Respondent No. 2 company) states that the entire settlement amount has been received and states that Respondent No.2 company has no objection if the complaint filed by him under Section 138 of the NI Act is compounded.



8. Offence under Section 50 of the NI Act is compoundable in nature.

9. 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.].

10. 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:

THE GUIDELINES

- (i) In the circumstances, it is proposed as follows:
- (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)



11. In the present case, the parties have settled the matter. It is relevant to note that the complainant has duly consented to compounding of the offence.

12. 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 can be imposed. The learned counsel for the petitioners requests that a lenient view be taken in imposition of cost considering that the settlement amount is already more than the cheque amount and the dispute essentially relates to a business transaction.

13. Considering the above, the present petition is allowed and CC No. 462684/2016 is compounded, subject to the payment of a total cost of ₹20,000/- by the petitioners, to be deposited with Delhi High Court Legal Services Committee.

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

15. The petition is disposed of in the aforesaid terms.

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

AMIT MAHAJAN, J

DECEMBER 5, 2024

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