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

+ CRL.REV.P. 465/2022 CRL.M.A. 14348/2022 CRL.M.(BAIL)
898/2022

DINESH NATHANI

.....Petitioner

Through: Mr. Ajit Rajput, Advocate along with
petitioner in person.

versus

THE STATE (GOVT. OF NCT OF DELHI)
& ANR.

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for
State.
Mr. Roshan Sathelia, Mr. Apurv
Prasad, Mr. Prateek Charan,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

16.12.2024

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1. This petition has been filed against the impugned order dated 04th May, 2022, by which the appeal against the judgment of conviction dated 18th November, 2020 passed by Trial Court in proceedings under Section 138 of Negotiable Instruments Act, was dismissed.
2. The sentence was suspended with a fine of Rs.1,40,000/- and simple imprisonment of one month. The fine has since been paid to the respondent before the Trial Court, as noted in this court's order dated 25th November 2022 as well.
3. In addition, this Court noted that the petitioner is ready to compensate the respondent for a further amount of Rs. 50,000/-; the said sum stands



deposited before the Trial Court as well. The cheque in question which was dishonoured was for Rs.1 lac.

4. Counsel for respondent states that Rs. 1,40,000/- has already been withdrawn from the Trial Court.

5. The respondent was permitted to withdraw Rs. 50,000/- as well from the Trial Court.

6. Despite this, the complainant is not willing to give his consent for compounding of the offence. Counsel for petitioner submits that the complaint be accordingly quashed in exercise of powers under Section 482 Cr.P.C.

7. The Supreme Court in ***A.S. Pharma (P) Ltd. v Nayati Medical (P) Ltd.*** 2024 SCC OnLine SC 2539 referred to the decision in ***Raj Reddy Kallem v The State of Haryana*** 2024 SCC OnLine SC 991 to state that in the said case, while taking note of earlier decisions of the Court in ***JIK Industries Ltd. & Ors. v Amarlal V. Jumani & Anr.*** (2012) 3 SCC 255 as also in ***Meters and Instruments (P) Ltd. v Kanchan Mehta*** (2018) 1 SCC 560, the Supreme Court in unambiguous terms has held that for compounding the offence under Section 138 of N.I. Act, ‘consent’ of the complainant is required. The relevant paragraph from ***A.S. Pharma*** (*supra*) is extracted as under:

“14. As relates the requirement of ‘consent’ for compounding offence under Section 138, N.I. Act, by invoking the power under Section 147, N.I. Act, it is to be noted that the question is no longer res integra. This Court in the decision in JIK Industries Ltd. v. Amarlal V. Jumani [(2012) 3 SCC 255] declined to accept the contention that in view of the non-obstante clause in Section 147, NI Act, which is a special statute, the requirement of consent of the person compounding the offence under Section 138, N.I. Act, is not required...

(emphasis added)

8. The Supreme Court in ***A.S. Pharma*** (*supra*) also emphasized that the



Court in **Raj Reddy** (*supra*) drew distinction between ‘*quashing of a case*’ and ‘*compounding of an offence*’. The relevant paragraph is extracted as under:

16...It is worthwhile to note at this juncture that in Raj Reddy Kallem's case this Court drew nice distinction between ‘quashing of a case’ and ‘compounding an offence’. To drive that point home, this Court referred to the decision in JIK Industries Ltd. case (supra), where this Court distinguished the quashing of a case from compounding as hereunder:—

“Quashing of a case is different from compounding. In quashing, the Court applies it but in compounding it is primarily based on consent of the injured party. Therefore, the two cannot be equated.”

(emphasis added)

9. The Supreme Court in **A.S. Pharma** (*supra*), also while referring to the decision in **Raj Reddy** (*supra*), held that it was observed that invoking the power under Article 142 of the Constitution of India can be no reason at all for High Courts to pass an order to quash proceedings under section 138 of the Negotiable Instruments Act, since such power is only available to the Supreme Court of India. The relevant paragraph is extracted as under:

“18... The decision in Raj Reddy Kallem's case (supra), also stands on a similar footing inasmuch as the complainant therein was duly compensated by the accused but the complainant did not agree for compounding the offence. After observing that, Courts could not compel the complainant to give consent for compounding the offence under Section 138, N.I. Act, this Court in Raj Reddy Kallem's case (supra) took note of the peculiar factual situation obtained and invoked the power under Section 142 of the Constitution of India to quash the proceeding pending against the appellant-accused under Section 138, N.I. Act. True that in Raj Reddy Kallem's case it was despite the non-consent of the complainant-respondent that the proceedings were quashed against the appellant therein, inter alia, taking note of the fact that the accused therein had compensated the complainant and



furthermore deposited the additional amount, as has been ordered by this Court. We have no doubt in holding that merely because taking into account such aspects and circumstances this Court ‘quashed’ the proceedings by invocation of the power under Article 142 of the Constitution of India, cannot be a reason for ‘compounding’ an offence under Section 138, N.I. Act, invoking the power under Section 482, Cr. P.C. and the power under Section 147, N.I. Act, in the absence of consent of the complainant concerned in view of the decision referred hereinbefore. In this context, this is to be noted that the fact that this Court quashed the proceedings under Section 138, N.I. Act, invoking the power under Article 142 of the Constitution of India can be no reason at all for High Courts to pass an order quashing proceeding under Section 138, N.I. Act, on the similar lines as the power under Article 142 of the Constitution of India is available only to the Supreme Court of India...

(emphasis added)

10. In view of the matter, this Court is of the opinion that the sentence of the petitioner be reduced to the fine already paid. As regards sum of Rs.50,000/- deposited before the Trial Court, the complainant would be at liberty to get it released in his favour.
11. The petition is allowed to the extent of the directions above and accordingly disposed of.
12. The substantive sentence of one month imprisonment is, therefore, set aside in view of the directions passed.
13. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 16, 2024/AK/na

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