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

\+ **CRL.REV.P. 696/2024, CRL.M.A. 16119/2024 & CRL.M.A. 16120/2024**

VISHNU CHANDER GARG ..... Petitioner

Through: Mr. Sanjay Bansal, Adv. along with petitioner.

versus

ANIL ARORA ..... Respondent

Through: Mr. Dhananjay Mehlawat, Adv. along with respondent in person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **22.05.2024**

CRL.M.A. 16121/2024

1. Exemptions allowed, subject to all just exceptions.

2. The application stands disposed of.

CRL.M.A. 16119/2024 (*condonation of delay*)

3. For the reasons mentioned in the application, the delay in filing the petition of eight days is condoned.

4. The application stands disposed of.

CRL.REV.P. 696/2024 & CRL.M.A. 16120/2024

5. The present petition is filed under Section 397 and 401 read with Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC**') challenging the judgment dated 09.01.2024 (hereafter '**impugned judgment**'), passed by the learned Additional Sessions Judge ('**ASJ**'), New Delhi District, Patiala House Courts, New Delhi, in Criminal Appeal No. 142/2023.

6. The learned ASJ, by the impugned judgment, upheld the judgment of conviction dated 28.04.2023 and order on sentence dated 09.05.2023, in CC No. 14254/2017, whereby the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of ₹4,18,561/-, and in default of payment of fine, it was directed that the fine shall be recoverable under Section 421 of the CrPC.

7. It is averred that the respondent / complainant had filed a complaint under the provisions of the NI Act as the two cheques issued by the petitioner/ accused, for the amounts of ₹75,515/- and ₹1,86,086/- respectively, in discharge of his liability were returned back with the remark – "Payment Stopped by Drawer".

8. The learned counsel for the petitioner submits that the parties have since settled the dispute amicably.

9. He further submits that the respondent / complainant has been handed over a demand draft of ₹4,51,000/- towards full and final settlement.

10. The learned counsel for the complainant submits that the complainant is satisfied with the said amount.

11. The parties are present in person and they have been duly identified by their respective counsel.

12. The respondent agrees that the parties have settled their disputes and that he has received the settlement amount. He submits that he does not wish to pursue the proceedings emanating out of CC No. 14254/2017. He states that he has no objection if the offence under Section 138 of the NI Act is compounded.

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

14. 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.].

15. 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."*

16. 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. Moreover, the entire settlement amount has already been paid to the complainant.

17. In such circumstances, considering the settlement between the parties, the present petition is allowed and the impugned judgment as well as the judgment of conviction dated 28.04.2023 and order on sentence dated 09.05.2023, passed in CC No. 14254/2017, are set aside, subject to the petitioner paying an amount of ₹39,340/- (approximately 15% of the total cheque amount, that is, ₹2,61,601/-) to the Delhi High Court Legal

Services Committee, within a period of sixteen weeks from date.

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

19. It is submitted that certain amount had been deposited by the petitioner before the learned Trial Court during the pendency of the complaint. The respondent states that he has no objection if the same is directed to be released in favour of the petitioner.

20. In view of the above, the said amount deposited by the petitioner with the learned Trial Court is directed to be released in his favour on the strength of the present order.

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

AMIT MAHAJAN, J

MAY 22, 2024
"SK"