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

+ CRL.M.C. 4900/2023 & CRL.M.A. 18688/2023(Stay)

M/S. M D FOODS AND ANR.Petitioners

Through: Mr. Dinesh Kothari and Mr. BS
Randhawa, Advs.

versus

SMALL FARMERS AGRI-BUSINESS
CONSORTIUM

.....Respondent

Through: Mr. Shantanu Garg and Ms. Mahima
Rathore, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

13.02.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the CrPC has been filed seeking the following prayers: -

a) Quash the Complaint Case bearing No. CC N.I. Act 5014/2022 U/s.138 N.I. Act PS Kotla Mubarakpur, titled Small Farmerrrs Agri Business Consortium Vs. M/s. MD Foods and consequential proceeding emanating therefrom against the petitioners.

b) Pass any other order(s) or relief(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice.

3. Proceedings in the present case arises from a complaint filed under Section 138 read with Sections 139, 141 and 142 of the Negotiable Instruments Act, 1881, (for short, 'NI Act') by the respondent against the present petitioners. Learned Trial Court *vide* order dated 07.11.2022 issued summons to the accused persons in the said complaint, i.e., petitioners herein. Thereafter, *vide* order dated 10.05.2023, the matter was referred to the Mediation Cell by the learned Trial Court. However, the



complainant/respondent refused to settle the matter as it was seeking compensation for interest accrued on the cheque amount along with litigation cost. Subsequently, the petitioners moved an application for compounding the offence with the respondent/complainant on 09.05.2023 before the learned Trial Court and the same was dismissed *vide* order dated 03.07.2023.

4. Learned counsel appearing on behalf of the petitioners submits that at the very first instance, when the petitioners appeared before the learned Metropolitan Magistrate (NI Act), an application for compounding of offence was filed by placing on record the demand drafts of the subject cheque amounts. However, the respondent/complainant refused to compound the offence. It is submitted that even as per the summoning order dated 07.11.2022, passed by learned Metropolitan Magistrate (NI Act), it was noted that as per the guidelines laid down in **Damodar S. Prabhu v. Sayed Babalal H., AIR 2010 SC 1907**, a mention would be made on the summons issued against the accused stating that "accused can make an application for compounding of the offence at the first and second hearing of the case and if such an application is made, compounding may be allowed by the Court without imposing any costs on the accused."

5. Learned counsel for the respondent submits that in the present petition has been filed without assailing the order whereby the application on behalf of the petitioners seeking compounding of the complaint/offence was dismissed. He further submits that respondent is not willing to settle the matter with the petitioners as the settlement proceedings with them have failed twice, i.e., before the learned Trial Court as well as before this Court.

6. Heard learned counsel for the parties and perused the record.

7. It is matter of record that the application on behalf of the present



petitioners seeking compounding of the offence/complaint with the respondent/complainant was dismissed by the learned Trial Court *vide* order dated 03.07.2023. As already noted hereinabove, the present petition has been filed seeking the quashing of the complaint case instituted by the respondent/complainant against the present petitioners and the said order of dismissal of application seeking of compounding of the complaint was not challenged by the petitioners before this Court.

8. During the pendency of the present petition, the matter was referred for mediation before the Delhi High Court Mediation and Conciliation Centre *vide* order dated 19.07.2023. However, the said mediation was not successful

9. The only ground on which quashing is sought is that a demand draft of the cheque amount has been deposited, and therefore, the respondent should accept the same and compound the offence. As noted hereinbefore, the application for compounding of the complaint was dismissed by the learned Trial Court *vide* order dated 03.07.2023. In the said order, the learned Trial Court after examining the contentions of both the parties had passed the following order: -

“Arguments heard. Record perused. Considered.

Section 147 of the Negotiable Instruments Act, 1881 provides for compounding of offences. The relevant provision is reproduced herein;

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

It is pertinent to mention that the application for compounding is opposed by the complainant. In the judgment in ***JIK Industries Limited and Ors vs. Amar Lal V. Jumani and Anr. 3535 (2021) (07) SC***, the Hon'ble Supreme Court observed that according to the provisions of Section 147 of the Negotiable Instrument Act, offences



under the same were made compoundable but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant could not be washed away nor could be substituted by the virtue of Section 147 of Negotiable Instrument Act. In ***Meters and Instruments Private Limited and Another v. Kanchan Mehta (2018) 1 SCC 560***, the Hon'ble Supreme Court was of the opinion that Section 143 of the Act confers implied power on the Magistrate to discharge the accused, if the complainant is compensated to the satisfaction of the court. On that analogy, it was held that apart from compounding by the consent of the parties, the Trial Court has the jurisdiction to pass appropriate orders under Section 143 in exercise of its inherent power. However, the five judges bench of the Supreme Court in a Suo-moto writ petition (CRL) No. (2) of 2020 in ***Re: - Expeditious trial of cases under Section 138 of the Negotiable Instrument Act, 1881***, observed that

"Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act. The judgment of this Court in Meters and Instruments (supra) in so far as it conferred 21 IP a g e power on the Trial Court to discharge an accused is not good law. Support taken from the words "as far as may be" in Section 143 of the Act is inappropriate. The words "as far as may be" in Section 143 are used only in respect of applicability of Sections 262 to 265 of the Code and the summary procedure to be followed for trials under Chapter XVII.,"

Thus, it was held that the judgment in ***Meters and Instruments Private Limited (supra)***, conferring a power on the trial Court to discharge an accused under Section 138 of Negotiable Instruments Act is not a good law.

Hence, when the complainant is not ready and willing to compound the offence, the powers under Section 147 NI Act cannot be exercised. The judgment in **Damodar S. Prabhu** (supra) cannot be relied upon as in that judgment both parties had consented to compounding of offence. Accordingly, for reasons mentioned herein, **the application for compounding of offence filed by the accused is dismissed**. The DD bearing no. 000507 of Rs. 14,35,000/- dated 06.05.2023 is retained on the judicial file which shall be released subject to the outcome of the case. Now to come up for framing of



notice on **26.07.2023.**”

10. This Court cannot compel the respondent/complainant to settle the complaint. The settlement has to be arrived at with mutual satisfaction of the parties concerned. Since, the petitioners did not pay the cheque amount upon receipt of the legal notice within the prescribed period, the offence under Section 138 of the NI Act *prima facie* stand committed. Payment of cheque amount after institution of complaint cannot be a ground to quash the proceedings.

11. In view of these circumstances, no grounds for quashing of the complaint case, being CC No. 5014/2022 titled as “Small Farmers Agri-Business Consortium v. M/s. MD Foods & Ors.” have been made out.

12. The present petition is dismissed and disposed of accordingly.

13. Interim order dated 19.07.2023 stands vacated.

14. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the purpose of the present petition.

15. Pending applications, if any, also stand disposed of accordingly.

16. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

FEBRUARY 13, 2025

[Click here to check corrigendum, if any](#)