

HIGH COURT OF DELHI
CORAM: HON'BLE MR. JUSTICE MANOJ JAIN
Date of Decision: 27th March, 2024

CRL.REV.P. 418/2024

DEVENDER SHARMA ...PETITIONER

VERSUS

STATE NCT OF DELHI & ANR. ...RESPONDENT

Legislation:

Section 138, 147 of the Negotiable Instruments Act
Sections 320, 397, 401, & 482 of the Criminal Procedure Code (Cr.P.C.)

Subject: Revision petition against conviction under Section 138 of the Negotiable Instruments Act for cheque dishonor, involving the compounding of the offense following a settlement between the parties.

Headnotes:

Criminal Law – Negotiable Instruments Act – Compounding of Offence – In the case of Devender Sharma versus State NCT of Delhi & Anr, the High Court of Delhi, presided by Hon'ble Mr. Justice Manoj Jain, dealt with a revision petition under Section 397, read with Sections 401 & 482 of Cr.P.C., challenging the conviction and sentence under Section 138 of the Negotiable Instruments Act. [Paras 1-5]

Condonation of Delay – The court condoned the delay in filing the revision petitions, with the consent of the respondents, ensuring no prejudice to their rights and contentions. [Paras CRL.M.A. 9426/2024, 3]

Settlement and Compounding – The petitioner, while in custody, reached a settlement with the complainant, leading to the filing of an application under Section 147 of the NI Act for compounding the offence. The Court noted the terms of the settlement and the payment of the agreed sum to the complainant. [Paras 7-12, 16-17]

Effect of Compounding – Acquittal – On allowing the application for compounding, the Court highlighted that compounding of the offence would result in acquittal as per Section 320(8) of Cr.P.C., directing the release of the petitioner if not required in any other case. [Paras 17-18]

Petition Disposal – The petition was disposed of, and instructions were issued for the petitioner's release and the submission of the cost payment proof [Paras 23-26].

Referred Cases:

- Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663

- Madhya Pradesh State Legal Services Authority Vs. Prateek Jain & Anr. (2014) 10 SCC 690

Representing Advocates:

Mr. Nadeem Quareshi for petitioner

Mr. Hitesh Vali, APP for State/Respondent No. 1, and Mr. Amit Yadav for Respondent No. 2

J U D G M E N T (oral)

CRL.M.A. 9398/2024 (exemption)

Exemption allowed subject to just all exceptions.

CRL.M.A. 9426/2024 (condonation of delay)

Learned counsel for respondent no. 2 and Mr. Vali have no objection if the delay is condoned without prejudice to their rights and contentions.

Delay is accordingly condoned.

CRL.M.A. 9399/2024 (u/s 147 of Negotiable Instruments Act for compounding)

1. A revision petition has been filed under Section 397 Cr.P.C. read with Sections 401 & 482 of Cr.P.C.
2. Respondent No. 2 had filed a complaint under Section 138 of Negotiable Instruments Act (*in short NI Act*) against the petitioner herein. Such complaint eventually resulted in conviction of the petitioner and in relation to the present complaint case i.e. Complaint Case No. 9978/2016, he was held guilty and convicted vide order dated 30.06.2023.
3. Order on sentence was passed by learned Trial Court on 25.08.2023 whereby he was sentenced to undergo simple imprisonment for a period of six months. Besides, he was also directed to pay compensation of double of the cheque amount. Since the cheque amount was Rs. 45,000/-, he was directed to deposit compensation of Rs. 90,000/-. It was also ordered that in default of payment of said compensation, he would further undergo simple imprisonment for a period of three months.
4. Petitioner challenged the aforesaid order by filing appeal which was registered as Criminal Appeal No. 181/2023. Said appeal was dismissed on 25.11.2023 and the quantum of sentence was also not disturbed/ interfered by the learned Appellate Court.
5. Petitioner was taken into custody on 25.11.2023 itself and is reportedly to be in custody since then.
6. Impugned order has been challenged on various grounds. It is, *inter alia*, claimed that complainant did not mention about the loan amount in ITR and, therefore, statutory presumption could not have been invoked.
7. Be that as it may, there is one significant development in the interregnum.

8. When the petitioner was in judicial custody, his son Vishal Sharma entered into settlement with complainant (respondent no. 2 herein) and such settlement has been reduced in writing. Copy of settlement deed has been attached as Annexure P-4.
9. We may also note that there were, in all, six complaints (including the present one) filed by respondent no. 2 under Section 138 NI Act against the petitioner. In all such six complaints, the cheque amount was identical i.e. Rs. 45,000/-. It is also admitted situation that similar sentence has been given to the petitioner in the other five complaints/matters also and petitioner has filed separate revision petitions challenging his conviction and sentence.
10. These revision petitions are CrI. Rev. P. 411/2024, CrI. Rev. P. 412/2024, CrI. Rev. P. 413/2024, CrI. Rev. P. 414/2024 & CrI. Rev. P. 416/2024.
11. Settlement deed is composite for all the six complaints and towards full and final settlement, the complainant i.e. respondent no. 2 has already been given a sum of Rs. 4,72,000/- which she has accepted without any pressure, force, coercion and misrepresentation. Such settlement deed bears her signatures as well.
12. She is present in Court and has reiterated the terms of the settlement and states that she would have no objection if matter is compounded. Her counsel Mr. Amit Yadav also identifies her and states that since matter has been amicably settled, he would have no objection if the application moved by the petitioner under Section 147 of NI Act is allowed and the revision petition stands disposed of accordingly.
13. Petitioner is in custody since 25.11.2023 and since settlement has already taken place between the parties, in order to avoid any further incarceration of the petitioner, matter has been taken up today for final disposal.
14. Mr. Vali, who represents respondent no. 2, has very fairly stated that since the matter is essentially between the two private parties and since they have settled their dispute and the payment has also been reportedly made to the complainant, he leaves it to the discretion of the Court to pass appropriate order.
15. I have gone through the contents of the application moved under Section 147 of NI Act and also the terms and conditions as mentioned in settlement deed (Annexure P-4) and there does not seem to exist any embargo or prohibition which may persuade this Court to deny compounding. 16. Complainant has already received the entire amount of Rs. 4,72,000/-. Out of the above, Rs. 3 lacs was paid to her by way of cheque and cheque amount has already been realized and the amount has already been credited in her account. She

also states that she has received the balance amount of Rs. 1,72,000/- in cash.

17. Keeping in mind the contents of the settlement deed and the fact that both the parties have amicably settled, application under Section 147 of NI Act is allowed.

18. As a necessary corollary, since the matter has been permitted to be compounded, such compounding shall have the effect of acquittal in terms of Section 320 (8) Cr.P.C. and, therefore, petitioner is directed to be released from jail forthwith if not required in any other case.

19. This Court is conscious of guidelines laid in ***Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663***. In the present case, complaint was filed way back in the year 2014 and the compounding has taken virtually after one decade and in said case of *Damodar S. Prabhu (supra)*, certain guidelines were issued and as per those specific guidelines, if the compounding takes place in a revision before the High Court, the compounding may be allowed on the condition that such accused pays 15% of the cheque amount by way of cost. We are also mindful of the fact that in the same judgment, it is also observed that the competent Courts can, of course, reduce the cost with regard to the specific facts and circumstances of the case, while recording reasons in writing for such variance. Reference be also made to ***Madhya Pradesh State Legal Services Authority Vs. Prateek Jain & Anr. (2014) 10 SCC 690***. 20. Petitioner is having no other criminal antecedents except for present complaint and the related five complaints.

21. Moreover, despite the fact that the matter has been settled, albeit, belatedly, he is in custody since 25.11.2023 and, therefore, this Court finds it to be a fit case where the cost needs to be reduced from 15% to 10%.

22. Resultantly, while permitting the compounding, the petitioner is also directed to pay 10% of the cheque amount by way of cost. Such amount comes to Rs. 4,500/- in the present complaint case. Same cost of Rs. 4,500/- is also being directed to be deposited by him in the related complaints. Thus, in all, he would be required to deposit a sum of Rs. 27,000/- with Delhi High Court Legal Services Committee. It is undertaken by learned counsel for the petitioner that he would deposit the said amount today itself and would submit the proof to the Court Master.

23. Let it be done.

24. A copy of this order be also sent to learned Trial Court.

25. A communication be sent to the Jail Superintendent along with copy of order with direction to release the petitioner forthwith if not required in any other case.
26. Petition is accordingly disposed of.

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