

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. – 3353 of 2018

With

C.R.R.- 3354 of 2018

IN THE MATTER OF

Dilip Adhikary

Vs.

Basanta Nath

**For the Petitioners : Mr. Avijeet Adhya Adv.,
Mr. Bikash Choudhury Adv.,
Mr. Debabrata Ray Adv.,
Mr. Soura Sarkar Adv.**

**For the Opposite Party : Mr. Achin Jana Adv.,
Mr. Suman Chakraborty Adv.,
Mr. Prasenjit Ghosh Adv.**

Judgment on : 25.09.2023

Subhendu Samanta, J.

Both the criminal revisions have preferred u/s 141 of the Code of Criminal Procedure against two order and judgments dated 12th October 2018 passed by the Learned Additional Sessions Judge, Fast Track 2nd Court Howrah in criminal appeal No. 53 of 2016 and 149 of 2015 respectively by

upholding and modifying the order of conviction and sentence passed by the Judicial Magistrate sentencing the present petitioner to suffer punishment till rising of the court and directed to pay compensation amounting to Rs. 1,20,000/- (One Lakh twenty thousand only) and Rs. 6,80,000/- (Six Lakh eighty thousand only), respectively with a direction to surrender within 30 days.

The brief fact of the case is that the present opposite party lodged a written complaint before the Learned Judicial Magistrate, Howrah u/s 138 of the Negotiable Instrument Act (NI Act) against the present petitioner. The Learned Magistrate upon the said complaint has initiated case, considered the evidences on record and hold the petitioner guilty of commission of offence u/s 138 of NI Act and pass the order of sentence and compensation. Being aggrieved by and dissatisfied with the said judgment and order of the petitioner preferred appeal before the Learned Sessions Judge, Howrah. The Learned Additional Sessions Judge, Fast Court 2nd Court heard the appeals and pass the impugned order.

Hence this revision.

During the course of argument of the instant revision applications the Learned Advocate for the petitioner submits that the matter may be compounded at this stage before this

Hon'ble Court and the accused petitioner is ready to deposit the cheque amount along with the 15 % of cheque amount by way of costs to the opposite party.

The proposal of the Learned Advocate for the petitioner was firmly negated by the respondent/opposite party.

The Learned Advocate for the petitioner submits that by virtue of the ratio of Honble Supreme Court passed in **Damodar S. Pravhu** The High court is empowered to compound the offences punishable u/s 138 of NI Act. The procedure of compounding of offence has been settled by the Hon'ble Supreme Court in **Damodar S. Prabhu** He also submitted that this Hon'ble Court in the case of **Subrata Kumar Dutta** reported in **2012 SCC online CAL 4526** quashed two criminal proceedings by strength of the ratio of **Damodar S. Prabhu**.

On the other hand the Learned Advocate for the opposite party submits that without consent of the complainant the proceeding u/s 138 of NI Act cannot be compounded at any stage. The matter was firmly discussed by the Hon'ble Apex Court in several decisions such as **Meters Instrument Private Limited and Another Vs. Kanchan Mehta sou moto writ petition (Criminal) No. 2 of 2020** reported in **AIR 2021 SC 1957** as well as **JK Industries Limited and Ors.**

In **Damodar S. Prabhu Vs. Said Babalal** reported in **AIR 2010 Supreme Court 1907** the Hon'ble Supreme Court has fixed the guideline regarding the compounding of offences punishable u/s 138 of NI Act. The Guideline

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.

This High Court in Subrata Kumar Dutta reported in 2012 SCC online 4526 has held that

Hence, it is held that the court where finds that payment of cheque has been paid to the complainant or amount is deposited in the court for disbursal to the complainant in consonance with the guidelines and parameters enumerated in Damodar S. Prabhu's case (supra) the court in the facts and

circumstances of the case, can quash the complaint and subsequent proceedings without the consent of the complainant under section 147 of the 1881 Act. To emphasize this, the Code of Criminal Procedure, in the table specified in Section 320 Cr.P.C. In Column No. 3, mentions the person who can compound the offence, whereas there is no such requirement under section 147 of the 1881 Act.

In Meters Instrument Private Limited and Anr. reported in **(2018) 1 SCC 560** the Hon'ble Supreme Court has held that

While it is true that in Subramaniam Sethuraman v. State of Maharashtra this Court observed that once the plea of the accused is recorded under Section 252 Cr.P.C, the procedure contemplated under chapter XX Cr.P.C has to be followed to take the trial to its logical conclusion, the said judgment was rendered as per statutory provisions prior to the 2002 Amendment. The statutory scheme post-2002 Amendment as considered in Mandvi Coop. Bank and J.V. Baharuni has brought about a change in law and it needs to be recognised. After the 2002 Amendment, 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, where the accused tenders the cheque amount with interest and reasonable cost of litigation as assessed by the court. Such an interpretation was consistent with the intention of legislature. The court has to balance the rights of the complainant and the accused and also to enhance access to justice. Basic object of the law is to enhance credibility of the cheque transactions by providing speedy remedy to the complainant without intending to punish the drawer of the cheque whose conduct is reasonable or where compensation to the complainant meets the ends of justice. Appropriate order can be passed by the court in exercise of its inherent power under Section 143 of the Act which is different from compounding by consent of parties. Thus, Section 258 CrPC which enables proceedings to be stopped in a summons case, even though

strictly speaking is not applicable to complaint cases since the provisions of CrPC are applicable “so far as may be”, the principle of the said provision is applicable to a complaint case covered by Section 143 of the Act which contemplates applicability of summary trial provisions, as far as possible i.e. with such deviation as may be necessary for speedy trial in the context.

The view of Hon’ble Apex Court passed in **Meters and Instrument Private Limited** (supra) was placed before the Hon’ble Supreme Court the 5 Judges Bench in a **Suo Moto writ petition (Criminal) 2 of 2020**. Wherein the Larger Bench of the Hon’ble Apex Court has discussed about the expeditious trial of cases u/s 138 of NI Act. In the said suo moto writ petition (Cri) the Hon’ble Supreme Court has held that

7. Section 258 of the Code is not applicable to complaints Under Section 138 of the Act and the findings to the contrary in Meters and Instruments (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaint Under Section 138 shall be considered by the committee constituted by an order of this Court dated 10.03.2021

In **Jik Industries Ltd. And Ors. Vs. Amarlal V. Jumani and another** reported in **(2012) 3 SCC 255** the Hon’ble Supreme Court has held that

--Held, As a result of sanction of a scheme under S. 391, Companies Act there is no automatic compounding of offences under S. 138. NI Act without consent of the complainant(s) creditor(s) - Nor does

sanctioned scheme have the effect of termination or dismissal of complaint proceedings under NI Act—Criminal cases like dishonour of cheque cases cannot get automatically compounded—Even if complainant creditors are bound by a scheme under S. 391, Companies Act for civil consequences (even if they might be a dissenting minority), compounding of criminal offences can be done only as per statutory procedure i.e. S. 320 Cr.P.C and only if persons aggrieved (i.e. creditors) have given their consent for the same

--Scheme of compounding and principles enshrined in S. 320 CrPC cannot be said to be inapplicable to compounding of offences under S. 147, NI Act--- If principles enshrined in S. 320 Cr.P.C, which is a complete code in itself on compounding of offences is not made applicable, compounding of offences under NI Act would be left totally unguided and uncontrolled – Such interpretation would not only be absurd and unreasonable but would also be against S. 4(2) Cr.P.C- Criminal Procedure Code, 1973, Ss. 320 and 4(2)

So, considering the ratio of the law laid down by the Hon'ble Apex Court it is clear that the prayer of compromise at the stage of criminal revision before this High Court is not possible without consent of the complainant. Nothing prevented the petitioner to make the proposal before the Magistrate or the appellate court. However, the law of the land is well established to the fact that the compounding cannot be held violating the principle enumerated in Section 320 of the Cr.P.C, thus I am of a view that the instant criminal revisions

and the offences as proved against the petitioner thereto u/s 138 of N.I. Act before the Learned Magistrate as well as before the Appellate Court cannot be compounded.

I find no merit in these criminal revisions; thus, both the criminal revisions are dismissed and disposed of.

The impugned judgment passed by the Learned Appellate Court in criminal appeal No. 53 of 2016 and 149 of 2015 respectively is hereby affirmed.

Connected CRAN applications if pending are also disposed of.

Any order of stay passed by this court during the pendency of these Criminal revisions is also vacated.

The petitioner is directed to appear before the Learned Magistrate on 19th of October 2023 to serve out the sentence.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)