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SUPREME COURT OF INDIA

Present : Mr. Justice A.S. Bopanna and Mr. Justice Sudhanshu Dhulia.

RAJ REDDY KALLEM – Appellant,

Versus

THE STATE OF HARYANA and another – Respondents.

CRIMINAL APPEAL NO. 2210 OF 2024 (ARISING OUT OF SLP (CRL) No. 629 OF 2023)

Negotiable Instruments Act, 1992 Section 138 - Compounding - Though the complainant has been duly compensated by the accused yet the complainant does not agree for the compounding of the offence, the courts cannot compel the complainant to give 'consent' for compounding of the matter - It is true that mere repayment of the amount cannot mean that the appellant is absolved from the criminal liabilities under Section 138 of the NI Act - But this case has some peculiar facts - Even though complainant is unwilling to compound the case but, considering the totality of facts and circumstances of the case we are of the considered view that these proceedings must come to an end - In order to do complete justice, we exercise our powers under Article 142 of the Constitution of India, and hereby quash all the pending criminal appeals and set aside the conviction and sentence awarded to the appellant by the trial court.

On facts: **Initially, both sides agreed to compound the offence at the appellate stage but the appellant could not pay the amount within the time stipulated in the agreement and the complainant now has shown her unwillingness towards compounding of the offence, despite receiving the entire amount - Appellant has paid the entire Rs.1.55 crore and further Rs.10 lacs as interest . Even though the complainant has been duly compensated by the accused yet the complainant does not agree for the compounding of the offence, the courts cannot compel the complainant to give 'consent' for compounding of the matter. It is also true that mere repayment of the amount cannot mean that the appellant is absolved from the criminal liabilities under Section 138 of the NI Act. But this case has some peculiar facts. Appellant has already been in jail for more than 1 year before being released on bail and has also compensated the complainant. Further, in compliance of the orders of the court he has deposited an additional amount of Rs.10 lacs. There is no purpose now to keep the proceedings pending in appeal before the lower appellate court.Quashing of a case is different from compounding. If continuance of criminal appeals against the appellant's conviction then it would defeat all the efforts of this Court in the last year where this Court had monitored this matter and ensured that the complainant gets her money back.**

JIK Industries Limited v. Amarlal V. Jamuni & Anr. **(2012) 3 SCC 255 denied the suggestion of the appellant therein that 'consent' is not mandatory in compounding of offences under Section 138 of NI Act. Court in *Meters and Instruments private Ltd. And Another. v. Kanchan Mehta* [5] (2018) 1 SCC 560 after discussing the series of judgments including the *JIK Industries Ltd.* (supra) observed that even in the absence of 'consent' court can close criminal proceedings against an accused in cases of section 138 of NI Act if accused has compensated the complainant. In our opinion, *Kanchan Mehta* (supra) nowhere contemplates that 'compounding' can be done without the 'consent' of the parties and even the above observation of *Kanchan Mehta* (supra) giving**

discretion to the trial court to 'close the proceedings and discharge the accused', by reading section 258, CrPC, has been held to be 'not a good law' by this Court in the subsequent 5 judges bench judgement in *Expeditious Trial of Cases Under Section 138 of NI Act, 1881*, In re, (2021) 16 SCC 1162.

Cases referred to:-

1. (2010)5 SCC 663, *Damodar S. Prabhu v. Sayed Babalal H.*

2. (2010)1 SCC 798, *K.M Ibrahim v. K.P Mohammed.*

3. (2000)1 SCC 762, *O.P Dholakia v. State of Haryana.*

4. (2012)3 SCC 255, *JIK Industries Limited v. Amarlal V. Jamuni.*

5. (2018)1 SCC 560, *Meters and Instruments private Ltd. v. Kanchan Mehta.*

ORDER

A.S. Bopanna and Sudhanshu Dhulia, JJ. – *(8th April, 2024)* - Leave granted.

2. The brief facts leading to this appeal are that in the year 2012 Respondent No.2-complainant placed a purchase order for the supply of *"Promotec Fiber Laser Cutting Machine"* to the company (M/s Farmax) of the appellant. For the said purchase, an advance amount of Rs.1,55,00,000 was paid to the company of the appellant. All the same, for some reasons, M/s Farmax failed to procure and supply this machine to respondent No.2-complainant. Thereafter, the appellant issued 5 cheques to the complainant towards return of the advance money. Admittedly, some of these cheques were dishonoured and in Nov-Dec 2013 the complainant initiated proceedings under section 138 of the Negotiable Instruments Act (hereinafter referred to as "NI Act"). Additionally, in January 2014 complainant filed a complaint under Section 156(3) of Criminal Procedure Code (hereinafter referred to as 'CrPC') which led to an FIR No.35 of 2014 at Police Station Mahesh Nagar (Ambala) under Sections 406, 420 and 120B of Indian Penal Code (hereinafter referred to as 'IPC') against the appellant, wherein it was said that the appellant had wrongfully retained the hard-earned money of the complainant and had cheated her. The charge sheet dated 21.07.2014 under Sections 406, 420 r/w 120B of IPC was filed against the appellant and trial commenced in the said FIR case.

3. In NI Act case, the trial court vide order dated 25.05.2015/29.05.2015 convicted the appellant under Section 138 of the NI Act and sentenced him to 2 years of rigorous imprisonment along with direction to pay the amount of cheques. In the appeal filed by appellant before the Additional Sessions Judge, both sides made an effort to settle the dispute and consequently the matter was placed before the Lok Adalat, where after negotiations, parties reached a settlement. Consequently, the Additional Session Judge, Pre-Lok Adalat, Amabala passed the settlement order dated 05.12.2015 where the appellant agreed to pay back the entire amount of Rs.1.55 crore, which was to be paid within a period of about 16 months. Once the entire amount was paid, the entire proceedings under Section 138 of NI Act as well as offences under Section 406, 420 read with 120B of IPC arising out of the FIR had to be compounded. This was also mentioned in the settlement order dated 05.12.2015, the relevant portion of the said order is reproduced below:

> "That if appellant shall pay entire amount as per settlement, then the offence u/s 138 of NI Act shall be compounded and FIR bearing No.35 of 2014 u/s 420, 406, 120-B, PS Mahesh Nagar, Ambala Cantt. shall be treated either as quashed or offences shall be treated as compounded."

However, the appellant could not discharge his liability in terms of the settlement and the Additional Sessions Judge passed an order dated 11.07.2016 holding that the settlement dated 05.12.2015 stood frustrated.

4. During 2016-2020, appellant approached various courts including this Court seeking an

extension of time to pay back the amount and meanwhile a substantial amount has been paid to the complainant. Finally, this matter came before this Court in SLP(Crl) No.10560 of 2019 filed by the appellant's wife and this court vide order dated 29.11.2019 passed an order directing the appellant's wife to deposit Rs.20 lacs before the trial court within three weeks as only Rs.20 lacs was the outstanding amount out of the total amount of Rs.1.55 crore at that relevant time. Appellant's wife failed to comply with this Court's order dated 29.11.2019 and that SLP was dismissed vide order dated 14.02.2020.

5. Thereafter, the appellant approached the trial court and presented a Demand Draft dated 12.02.2020 of Rs.20 lacs in favour of the complainant as repayment towards the remaining amount of Rs.20 lacs. In this application, the appellant prayed that criminal proceedings pending against the appellant, initiated on the instance of the complainant, should either be compounded or quashed. However, considering the submission of counsel of the complainant that SLP in which the appellant's wife was directed to deposit the amount before the trial court has already been dismissed, the trial court vide order dated 09.02.2021 refused to accept the Demand Draft presented by the appellant by noting that such an application is not maintainable.

6. This order dated 09.02.2021, where the trial court refused to accept the DD for the remaining Rs.20 lacs, was challenged by the appellant before the High Court through an application under Section 482 of CrPC. Vide impugned order dated 29.11.2022, the High Court dismissed the application of appellant on the ground that the appellant failed to deposit the remaining Rs. 20 lacs within the time stipulated (3 weeks) in the Supreme Court order dated 29.11.2019. Now, the appellant is before us in the present appeal.

7. On 14.03.2023, this Court passed an interim order directing the appellant to deposit Rs.20 lacs before the trial court and sought a compliance report from the trial court. This Court order dated 14.03.2023 reads as follows:

> "The petitioner shall deposit the sum of ₹ 20 lakhs before the trial court within two weeks. The trial court shall pass an order recording the deposit and also indicate whether the petitioner has duly complied with the present order.
>
> A copy of this order shall be communicated directly to the Judicial Magistrate First Class, Ambala (seized of Criminal Case No. 78 of 2014 arising out of FIR 35 of 2014).
>
> The trial court shall then report compliance to the Registry to this Court.
>
> List after three weeks."

Pursuant to the aforesaid order of this Court, appellant submitted two cheques of amount Rs.10 lacs each before the trial court and the trial court forwarded a compliance report to this Court mentioning that appellant has duly complied with the interim order dated 14.03.2023. Thereafter, on the next date of hearing on 08.08.2023, this Court recorded the compliance of its previous order and directed the appellant to further deposit Rs.10 lacs towards interest for delayed payment. To make the matter clear, we would like to reproduce that interim order of this Court, which read as follows:

> "It is submitted that the petitioner has deposited ₹20 lakhs in trial court, having regard to the delay in payment (8 years). In the circumstances of the case, justice would demand that the petitioner deposits a further sum of ₹10 lakhs towards interest for the delayed payment (working out to 6% p.a. for the last 8 years). This amount shall be deposited in Court within four weeks from today. The demand draft which has been deposited before the trial court shall be re-validated, in case it has expired in the meanwhile.
>
> List after six weeks."

8. Trial Court vide order dated 01.09.2023

noted the compliance of the above order of this Court. In this way, the appellant has by now returned the entire due amount and also paid Rs.10 lacs more towards the interest for the delayed payment. When the matter again came up for hearing on 12.02.2024, this Court recorded that the entire amount had been paid and, at the request of both sides, granted time to both sides to draw a settlement. Later on, 11.03.2024, the counsel representing the appellant stated that a settlement had been reached between the parties whereas counsel for respondents sought some time to verify the same, and consequently, the matter was adjourned for today.

9. Today, we heard both sides again. The counsel of Respondent No.2 i.e., the complainant states that there is no settlement between the parties and the complainant is not willing to compromise the matter. After the passing of the previous order dated 11.03.2024, Respondent No.2 (Complainant) has also filed an affidavit stating that no settlement has been reached between the parties as alleged by the appellant. On the other side, the counsel of the appellant contended that since the appellant has paid back the entire amount of Rs.1.55 crore and has also paid a further sum of Rs.10 lacs towards the interest, there is no ground left for continuing criminal proceedings against the appellant.

10. The significant fact here is that pending appeals before Additional Sessions Judge against the appellant's conviction under Section 138 of the NI Act, initially both the sides had entered into a settlement in the Lok Adalat, where they agreed that if the appellant compensates the complainant by repaying the entire amount of Rs.1.55 crore then they would get the offences compounded or quashed. However, the trial court by order dated 11.07.2016 declared the settlement as frustrated on the ground that the appellant could not pay the complainant on the deadlines stipulated in the said settlement and the trial court might have been right in doing so because settlement itself had a clause which read as follows:

> "5. That in case of default of making payment well in time according to dates mentioned above, the settlement shall be frustrated with immediate effect and then appeal shall be decided on merit."

Be that as it may, it is also true that the complainant had accepted the amount from the appellant later when the appellant approached higher courts showing his willingness to pay the amount as agreed between the parties.

11. As per section 147 of the NI Act, all offences punishable under the Negotiable Instruments Act are compoundable. However, unlike Section 320 of CrPC, the NI Act does not elaborate upon the manner in which offences should be compounded. To fill up this legislative gap, three Judges Bench of this Court in *Damodar S. Prabhu v. Sayed Babalal H.* [1] (2010) 5 SCC 663, passed some guidelines under Article 142 of the Constitution of India regarding compounding of offence under Section 138 of NI Act. But most importantly, in that case, this Court discussed the importance of compounding offence under Section 138 of the NI Act and also the legislative intent behind making the dishonour of cheque a crime by enacting a special law. This Court had observed that:

> "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.
>
> 5. Invariably, the provision of a strong criminal remedy has encouraged the institution of a large number of cases that are relatable to the offence contemplated by Section 138 of the Act. So much so, that at present a disproportionately large number of

cases involving the dishonour of cheques is choking our criminal justice system, especially at the level of Magistrates' Courts……..”

Further, after citing authors pointing towards compensatory jurisprudence within the NI Act, this Court observed that:

“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.”

12. This Court has time and again reiterated that in cases of section 138 of NI Act, the accused must try for compounding at the initial stages instead of the later stage, however, there is no bar to seek the compounding of the offence at later stages of criminal proceedings including after conviction, like the present case (See: *K.M Ibrahim v. K.P Mohammed & Anr.* [2] (2010) 1 SCC 798 and *O.P Dholakia v. State of Haryana & Anr.* [3] (2000) 1 SCC 762).

In the case at hand, initially, both sides agreed to compound the offence at the appellate stage but the appellant could not pay the amount within the time stipulated in the agreement and the complainant now has shown her unwillingness towards compounding of the offence, despite receiving the entire amount. The appellant has paid the entire Rs.1.55 crore and further Rs.10 lacs as interest.

As far the requirement of ‘consent’ in compounding of offence under section 138 of NI Act is concerned, this Court in *JIK Industries Limited & Ors. v. Amarlal V. Jamuni & Anr.* [4] (2012) 3 SCC 255 denied the suggestion of the appellant therein that ‘consent’ is not mandatory in compounding of offences under Section 138 of NI Act. This Court observed that:

“57. Section 147 of the Negotiable Instruments Act reads as follows:

“147.Offences to be compoundable.—

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

58. Relying on the aforesaid non obstante clause in Section 147 of the NI Act, the learned counsel for the appellant argued that a three-Judge Bench decision of this Court in Damodar [(2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] , held that in view of non obstante clause in Section 147 of the NI Act, which is a special statute, the requirement of consent of the person compounding in Section 320 of the Code is not required in the case of compounding of an offence under the NI Act.

59. This Court is unable to accept the aforesaid contention for various reasons……”

Further this Court observed in para 89 of the said judgement that:

“Section 147 of the NI Act must be reasonably construed to mean that as a result of the said section the offences under the NI Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of the NI Act.”

This Court in *Meters and Instruments private Ltd. And Another. v. Kanchan Mehta* [5] (2018) 1 SCC 560 after discussing the series of judgments including the *JIK Industries Ltd.* (supra) observed that even in the absence of ‘consent’ court can close criminal proceedings against an accused in cases of section 138 of NI Act if accused has compensated the complainant. The exact words of this Court were as follows:

“18.3. Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.”

In our opinion, *Kanchan Mehta* (supra) nowhere contemplates that 'compounding' can be done without the 'consent' of the parties and even the above observation of *Kanchan Mehta* (supra) giving discretion to the trial court to 'close the proceedings and discharge the accused', by reading section 258 [1] (258. Power to stop proceedings in certain cases.—In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge) of CrPC, has been held to be 'not a good law' by this Court in the subsequent 5 judges bench judgement in *Expeditious Trial of Cases Under Section 138 of NI Act, 1881*, In re, (2021) 16 SCC 1162.

All the same, in this particular given case even though the complainant has been duly compensated by the accused yet the complainant does not agree for the compounding of the offence, the courts cannot compel the complainant to give 'consent' for compounding of the matter. It is also true that mere repayment of the amount cannot mean that the appellant is absolved from the criminal liabilities under Section 138 of the NI Act. But this case has some peculiar facts as well. In the present case, the appellant has already been in jail for more than 1 year before being released on bail and has also compensated the complainant. Further, in compliance of the order dated 08.08.2023, the appellant has deposited an additional amount of Rs.10 lacs. There is no purpose now to keep the proceedings pending in appeal before the lower appellate court. Here, we would like to point out that quashing of a case is different from compounding. This Court in *JIK Industries Ltd*. [3] (Supra) distinguished the quashing of case from compounding in the following words:

> "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."

In our opinion, if we allow the continuance of criminal appeals pending before Additional Sessions Judge against the appellant's conviction then it would defeat all the efforts of this Court in the last year where this Court had monitored this matter and ensured that the complainant gets her money back.

13. As far as FIR case under Sections 406, 420, 120B of IPC against the appellant is concerned, in any case we do not find any merit in the allegations that the appellant from the very beginning had the intention of cheating the complainant. It is a fact that the appellant failed to procure and supply the 'machine' even after taking the advance money from the complainant but there is nothing on record to show that the appellant had any ill intention of cheating or defrauding the complainant from the very inception. The transaction between the parties was purely civil in nature which does not attract criminal law in any way.

14. Even though complainant is unwilling to compound the case but, considering the totality of facts and circumstances of the present case which we have referred above, we are of the considered view that these proceedings must come to an end. We, therefore, allow this appeal and set aside the impugned order of High Court dated 29.11.2022. We also quash all the criminal proceedings qua appellant arising out of FIR No.35 of 2014 at P.S Mahesh Nagar, Ambala pending before Chief Judicial Magistrate, Ambala. Since, criminal appeals filed by present appellant against his conviction under Section 138 of the NI Act are also pending, we deem it appropriate that the

said proceedings should also be quashed. Hence, in order to do complete justice, we exercise our powers under Article 142 of the Constitution of India, and hereby quash all the pending criminal appeals on the file of Additional Sessions Judge, Ambala Cantt., against the appellant in the present matter, and set aside the conviction and sentence awarded to the appellant by the trial court.

15. We also direct the trial court to hand over the Demand Drafts totalling the amount of Rs.30 lacs to the complainant which were deposited in the trial court in pursuance of this Court's orders, if not handed-over till now.

Pending application(s), if any, stand(s) disposed of.

R.M.S. - *Appeal allowed.*