

Ranjeet Singh vs State & Anr on 1 September, 2023

Author: Amit Sharma

Bench: Amit Sharma

\$~44

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.REV.P. 366/2019
RANJEET SINGH

STATE & ANR.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

% 01.09.2023 CRL.M.A. 42584/2019 (Compound the offences)

1. The present application under Section 147 of the Negotiable Instruments Act, 1881 ('NI Act') read with Sections 482 and 320 of the CrPC seeks the following prayers:

"a. Grant permission to the revisionist/petitioner to compound the offences under section 138 N.I. Act and to record its acquittal in the complaint case bearing Old C.C. no.29/1/16, titled Pradeep Kumar Vs Ranjeet Singh;

b. set aside the order/judgment passed by Sh Vinod Kumar, Ld. Additional Session Judge-05, North Rohini Court Delhi, vide dated 18.03.2019 thereby dismissing the Criminal appeal no. 79/2017, Titled "Ranjeet singh versus Pradeep Kumar" filed by the revisionist/petitioner against c. the order and judgment dated 16.05.2017 and 22.05.2017 by the Ld Magistrate Rohini District court of Sh. Sunil Kumar, Ld. Metropolitan Magistrate, Rohini Court, New Delhi in old C.C. No.29/1/16 entitled as Pradeep Kumar vs. Ranjeet Singh' c. pass any other or such order(s) as deem fit and proper in the facts and circumstances of the case."

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:46:07

2. Vide judgment dated 16.05.217 passed in Old CC No. 29/1/16 titled 'Pradeep Kumar v. Ranjeet Singh', the learned Metropolitan Mahistrate-03, North District, Rohini convicted the petitioner

herein for offence under Section 138 of the NI Act. Vide order on sentence dated 22.05.2017, the learned Metropolitan Magistrate sentenced the petitioner to undergo simple imprisonment for one year and awarded a compensation of Rs. 90 Lakhs to the respondent to be paid within one month from the date of the order. On an application under Section 389(3) of the CrPC, the learned Metropolitan Magistrate suspended the sentence awarded to the petitioner, for filing an appeal. Vide judgment dated 18.03.2019 passed in Criminal Appeal No. 79/2017 titled 'Ranjeet Singh v. Pradeep Kumar & Anr', the learned Additional Sessions Judge - 05, (North), Rohini dismissed the appeal filed on behalf of the petitioner challenging the aforesaid conviction. However, the learned ASJ modified the order on sentence to the extent that the compensation awarded to respondent no. 2 was set aside.

3. Learned counsel for the petitioner submits that during the pendency of the captioned revision petition, vide Memorandum of Understanding ('MoU') dated 31.01.2019, the petitioner has settled the matter with respondent no. 2/complainant. As per the said MoU, the petitioner has agreed to pay a sum of Rs. 28,90,000/- to respondent no. 2/complainant towards the full and final settlement of the dispute. Rs.23,90,000/- has been paid to respondent no. 2/complainant. The remaining Rs. 5 lakhs has been paid by way of transferring ownership and possession of a Hyundai Verna Car (Registration Number - DL 10 CS 3127) in the name of respondent no. 2/complainant. Pursuant to the said MoU, respondent no. 2/complainant has withdrawn CRL.REV.P. 474/2019, whereby he had challenged the order of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:46:07 the learned ASJ. The same was withdrawn and disposed of by a coordinate bench of this Court vide order dated 01.08.2019.

4. Learned counsel for the petitioner submits that it is settled law that offence under Section 138 of the NI Act can be compounded even after conviction. In support of the said contention, he places reliance on a judgment of the Hon'ble Supreme Court in Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663.

5. It is an admitted position that the matter has been settled between the parties vide an MoU dated 31.07.2019 and all the terms of the said MoU have been complied with. The Hon'ble Supreme Court, in Damodar S. Prabhu (supra) held as under:

"8. Before examining the guidelines proposed by the learned Attorney General, it would be useful to clarify the position relating to the compounding of offences under the Negotiable Instruments Act, 1881. Even before the insertion of Section 147 in the Act (by way of an amendment in 2002) some High Courts had permitted the compounding of the offence contemplated by Section 138 during the later stages of litigation. In fact, in O.P. Dholakia v. State of Haryana [(2000) 1 SCC 762 : 2000 SCC (Cri) 310] a Division Bench of this Court had permitted the compounding of the offence even though the petitioner's conviction had been upheld by all the three designated forums. After noting that the petitioner had already entered into a

compromise with the complainant, the Bench had rejected the State's argument that this Court need not interfere with the conviction and sentence since it was open to the parties to enter into a compromise at an earlier stage and that they had not done so. The Bench had observed: (SCC p. 763, para 3) "3. ... taking into consideration the nature of offence in question and the fact that the complainant and the accused have already entered into a compromise, we think it appropriate to grant permission, in the peculiar facts and circumstances of the present case, to compound."

Similar reliefs were granted in the orders reported as Sivasankaran v. State of Kerala [(2002) 8 SCC 164 : 2002 SCC This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:46:07 (Cri) 1872] , Kishore Kumar v. J.K. Corpn. Ltd. [(2004) 13 SCC 494 : (2006) 1 SCC (Cri) 348] and Sailesh Shyam Parsekar v. Baban [(2005) 4 SCC 162 : 2005 SCC (Cri) 1321] among other cases.

9. As mentioned above, the Negotiable Instruments Act, 1881 was amended by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 which inserted a specific provision i.e. Section 147 "to make the offences under the Act compoundable". We can refer to the following extract from the Statement of Objects and Reasons attached to the 2002 amendment which is self-explanatory:

"Prefatory Note--Statement of Objects and Reasons.--The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act, 1881, namely, Sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the courts to deal with such matters has been found to be cumbersome. The courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act."

(emphasis supplied) In order to address the deficiencies referred to above, Section 10 of the 2002 amendment inserted Sections 143, 144, 145, 146 and 147 into the Act, which deal with aspects such as the power of the court to try cases summarily (Section 143), mode of service of summons (Section 144), evidence on affidavit (Section 145), bank's slip to be considered as prima facie evidence of certain facts (Section 146) and offences under the Act to be compoundable (Section 147).

xxx

12. Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-section (9) of Section 320 CrPC which states that "No offence shall be This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:46:07 compounded except as provided by this section". A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) CrPC, especially keeping in mind that Section 147 carries a non obstante clause."

6. In view of the judgment of the Hon'ble Supreme Court in Damodar S. Prabhu (supra), in the facts and circumstances of the present case, the present application is allowed.

7. The offence under Section 138 of the NI Act stands compounded. CRL.M.A. 12943/2023 (for waving of the imposition of cost) and

8. CRL.MA. 12943/2023 filed on behalf of the petitioner under Section 482 of the Cr.P.C. seeks following prayers:-

"It is, therefore, most respectfully prayed before this Hon'ble Court that in view of the facts/ circumstances submitted above and. in the interest of justice this Hon'ble court may kindly be pleased to:

(a) waive the imposition of cost upon the Petitioner as a condition for allowing the compounding the offence under Section 138 of N.I. Act, vide the subject matter of the present petition.

(b) pass any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

9. Learned counsel for the petitioner submits that he has a valid defence in support of his contentions. It is further submitted that the petitioner does not have many sources of income. He has a family comprising of old parents, an ailing wife and two children who are dependent upon him. He is the sole bread earner of the family.

10. Learned counsel for the petitioner submits that in Damodar S. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:46:07 Prabhu (supra), while laying down guidelines in relation to imposition of costs, the Hon'ble Supreme Court also held as under:

"25. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end."

It is thus submitted that the guidelines in Damodar S. Prabhu (supra) are only directory in nature and have been laid down only to save the time of the Courts and encourage compounding at the earliest possible stage. Learned counsel for the petitioner places reliance on a judgment of the Hon'ble High Court of Gujarat in Dahiben Mavjibhai Chauhan v. State of Gujarat, 2022 LawSuit (Guj) 7436, wherein the court has, in the facts and circumstances of the case, imposed a cost of Rs. 15,000/- as opposed to the 15% of the cheque amount as per the guidelines in Damodar S. Prabhu (supra).

11. Learned counsel for respondent no. 2/complainant, on instructions from the latter, fairly did not oppose the contentions raised on behalf of the petitioner. The said fact was recorded by this Court vide order dated 15.05.2023, in the presence of respondent no. 2/complainant.

12. In view of the fact that the offence under Section 138 of the NI Act stands compounded, judgment dated 16.05.2017 and order on sentence dated This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:46:07. 22.05.2017 passed in Old CC No. 29/1/16 titled 'Pradeep Kumar v. Ranjeet Singh', by the learned Metropolitan Mahistrate-03, North District, Rohini are set aside. Judgment dated 18.03.2019 passed in Criminal Appeal No. 79/2017 titled 'Ranjeet Singh v. Pradeep Kumar & Anr'. by the learned Additional Sessions Judge - 05, (North), Rohini is also set aside and the petitioner is acquitted of offence under Section 138 of the NI Act.

13. The present petition is allowed and disposed of, subject to a cost of Rs. 50,000/- to be paid by the petitioner within 10 days from today to the "Green Delhi Account" - Account no. 15530110156933 at UCO Bank, Delhi High Court (IFSC CODE: UCBA0001553).

14. Pending applications, if any, also stand disposed of.

AMIT SHARMA, J SEPTEMBER 01, 2023/sn This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 15:46:07