

A.S. Pharma Pvt. Ltd.

v.

Nayati Medical Pvt. Ltd. & Ors.

(Criminal Appeal No(s). 3051-3052 of 2024)

23 July 2024

[C.T. Ravikumar and Sanjay Karol, JJ.]

Issue for Consideration

High Court whether justified in exercising its inherent power under Section 482, Cr.P.C and the power under Section 147, N.I. Act, 1881 to compound the offence u/s.138 of the Negotiable Instruments Act, 1881, despite the non-consent of the complainant-appellant.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.482 – Negotiable Instruments Act, 1881 – ss.138, 147 – Scope – Trial Court dismissed the application for compounding the offence u/s.138, N.I. Act filed u/s.320 Cr.P.C. – High Court despite the absence of the consent of the appellant-complainant compounded the offence u/s.138, N.I. Act qua the respondent-accused, exercising its inherent power u/s.482 Cr.P.C. and the power u/s.147, N.I. Act, on the ground that the appellant was equitably compensated – Sustainability:

Held: Cannot be sustained, set aside to that extent – s.482, Cr.P.C. and s.147, N.I. Act are different and distinct – s.482, Cr.P.C. is the inherent power of High Court exercisable even suo motu to give effect to any order under Cr.P.C., or to prevent abuse of the process of any court or otherwise to secure the ends of justice – However, the provision for compounding every offence punishable under the N.I. Act, u/s.147, N.I. Act, is not a power available to a Court to exercise without the consent of the complainant – Inherent powers u/s.482, Cr.P.C. are invocable when no other efficacious remedy is available to the party concerned and not where a specific remedy is provided by the statute concerned – Power u/s.482, Cr.P.C. cannot be invoked ignoring the factor which is *sine qua non* for the exercise of power to compound the offence(s) under N.I. Act viz., the consent of the complainant – An offence u/s.138, N.I. Act could be compounded u/s.147 only with the consent of the complainant

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concerned – In view of the peculiar facts w.r.t the deposit of the amount payable under the impugned judgment and the readiness of the respondent-accused to effect the payment and to settle the matter, there is no point in restoring the proceedings and continue them before the trial Court though the impugned judgment has been set aside – Hence, despite the lack of consent from the appellant, complaint and all the proceedings emerging therefrom quashed exercising power u/Article 142 of the Constitution of India. [Paras 11, 17, 19, 21]

Code of Criminal Procedure, 1973 – s.482 – Negotiable Instruments Act, 1881 – ss.138, 147 – Constitution of India – Article 142 – Exercise of power u/Article 142 by the Supreme Court in Raj Reddy Kallem's case to quash the proceeding pending u/s.138, N.I. Act – High Courts quashing proceeding u/s.138, N.I. Act on the similar lines – Impermissibility:

Held: Supreme Court in Raj Reddy Kallem's case took note of the fact that the accused therein had compensated the complainant and deposited the additional amount as ordered – It was in view of such peculiar factual situation obtained therein that the Supreme Court invoked the power u/Article 142 of the Constitution of India to quash the proceeding pending against the appellant-accused therein u/s.138, N.I. Act, despite the non-consent of the complainant-respondent – However, this cannot be a reason for ‘compounding’ an offence u/s.138, N.I. Act, invoking the power u/s.482, Cr.P.C. and the power u/s.147, N.I. Act, in the absence of consent of the complainant concerned – The fact that Supreme Court quashed the proceedings u/s.138, N.I. Act, invoking the power u/Article 142 can be no reason at all for High Courts to pass an order quashing proceeding u/s.138, N.I. Act, on the similar lines as the power u/Article 142 of the Constitution of India is available only to the Supreme Court of India. [Para 18]

Case Law Cited

Monica Kumar (Dr.) v. State of Uttar Pradesh [**2008] 9 SCR 943**] : (**2008**) 8 SCC 781; *Arvind Barsaul (Dr.) v. State of M.P.* (**2008**) 5 SCC 794; *Damodar S. Prabhu v. Sayed Babalal H.* [**2010] 5 SCR 678**] : (**2010**) 5 SCC 663; *K.M. Ibrahim v. K.P. Mohammed & Anr.* [**2009**] 15 SCR 1300 : (**2010**) 1 SCC 798; *O.P. Dholakia v. State*

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of Haryana & Anr. (2000) 1 SCC 762; JIK Industries Ltd. & Ors v. Amarjal V. Jumani & Anr. [2012] 3 SCR 114 : (2012) 3 SCC 255; Raj Reddy Kallem v. The State of Haryana & Anr. [2024] 5 SCR 203 : 2024 INSC 347; Meters and Instruments Private Ltd. & Anr. V. Kanchan Mehta [2017] 10 SCR 66 : (2018) 1 SCC 560; Expedited Trial of Cases Under Section 138, N.I. Act, 1881, In re [2021] 4 SCR 257 : (2021) 16 SCC 116; State of Punjab & Ors. v. Surinder Kumar & Ors. [1991] Supp. 3 SCR 553 : (1992) 1 SCC 489 – referred to.

List of Acts

Negotiable Instruments Act, 1881; Code of Criminal Procedure, 1973; Constitution of India.

List of Keywords

Section 482 of the Code of Criminal Procedure, 1973; Section 147, Negotiable Instruments Act, 1881; Article 142 of the Constitution of India; Quashing of proceeding u/s.138, Negotiable Instruments Act, 1881; Inherent power; Compounding the offence u/s.138 of the Negotiable Instruments Act, 1881; Dishonor of cheques; Consent; Consent of the complainant; Non-consent of the complainant; Lack of consent of the complainant; ‘Consent’ for compounding offence; Compounding of offence; Complainant compensated; To do complete justice between the parties.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 3051-3052 of 2024

From the Judgment and Order dated 13.12.2023 of the High Court of Delhi at New Delhi in CRLMC No. 970 of 2023 and CRLMA No. 3701 of 2023

Appearances for Parties

Vimit Trehan, Dhruv Dwivedi, Ravi Bharuka, Advs. for the Appellant.
Giriraj Subramanium, Simarpal Singh Sawhney, Siddhant Juyal, Veda Singh, Ravi Pathak, Simar Singh Sawhney, Akhilesh Talluri, Joy Banarjee, Ms. Urvarshi Singh, Aditya Singh, Advs. for the Respondents.

A.S. Pharma Pvt. Ltd. v. Nayati Medical Pvt. Ltd. & Ors.**Judgment / Order of the Supreme Court****Order**

Delay condoned.

Leave granted.

1. These appeals are directed against the judgment dated 13.12.2023 passed by the High Court of Delhi in Criminal Miscellaneous Case No. 970 of 2023 and Criminal Miscellaneous Appeal No. 3701 of 2023. The appellant filed Complaint Case No. 5564 of 2022 alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act') against the respondents. On receipt of the summons, the respondents appeared before the Court and expressed their readiness to settle the matter by effecting the payment. An application to permit to compound the offence was filed under Section 320 of the Code of Criminal Procedure, 1973 (for short, the 'Cr.P.C.'). The Trial Court dismissed the same as per order dated 06.02.2023. Aggrieved by the order of the Trial Court, respondents took up the matter before the High Court challenging the order dismissing the application for compounding the offence under Section 138, N.I. Act also seeking quashment of C.C. No.5564 of 2022 and all further proceeding thereon in Criminal M. C. No. 970 of 2023. As per the impugned judgment the High Court, apparently, exercised the inherent power under Section 482, Cr.P.C., coupled with those under Section 147, N.I. Act, and ordered thus:-

"17. Accordingly, the present petition is allowed and the offence of the petitioners/ accused persons in Complaint Case No.5564/2022 titled A.S. Pharma Pvt. Ltd. vs M/S Nayati Medical Pvt. Ltd. & Ors. pending before the learned Trial Court is hereby compounded, albeit subject to the petitioners depositing before the concerned learned Trial Court the cumulative cheque(s) amount of Rs.6,50,000/- (Rs. Six Lakhs fifty thousand only) with 12% simple interest per annum thereon from the date of cheque(s) return memo i.e. 18.03.2020 till the date of actual payment of the amount as also a sum of Rs.1,00,000/- Rs. One Lakh only), within a period of eight weeks. Needless to mention, the amount, if any, already deposited before the learned Trial

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Court be adjusted in the aforesaid sum(s). The respondent/complainant is free to move an appropriate application for release of the amount deposited before the learned Trial Court in above terms."

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.
3. The core contention of the appellant is that an offence under Section 138 of the N.I. Act is not compoundable under Section 320 Cr.P.C., and in such circumstances, the application was rightly dismissed by the Trial Court. Ergo, invoking the power under Section 482 Cr.P.C., coupled with those under Section 147, N.I. Act, the High Court ought not to have compounded the offence without the consent of the appellant.
4. *Per contra*, the learned counsel appearing for the respondents submitted that when the indisputable position is that the offence under Section 138 of the N.I. Act is compoundable under Section 147 of the N.I. Act, no palpable illegality could be attributed to the action in invoking the power under Section 482, Cr.P.C, coupled with the power under Section 147, N.I. Act to compound the offence. The said contention of the respondents was resisted by the learned counsel for the appellant contending that for compounding the offence, consent of the complainant is required. Sans consent from the complainant, the High Court was not justified in compounding of the offence under Section 138, N.I. Act, it is further contended.
5. A perusal of the impugned order would reveal that though the High Court entertained the challenge against the order rejecting an application for compounding the offence under Section 138, N.I. Act filed under Section 320 Cr.P.C., the High Court actually compounded the offence invoking its inherent power under Section 482 Cr.P.C., coupled with the power under Section 147 of the N.I. Act. To consider the legality and correctness of the said exercise of power, it is imperative to understand the scope of Section 482, Cr.P.C, as also Section 147 of the N.I. Act. Section 482, Cr.P.C., reads thus: -

"482. Saving of inherent powers of High Court. — Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be

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necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

6. In the decision in ***Monica Kumar (Dr.) v. State of Uttar Pradesh [(2008) 8 SCC 781]***, this Court held that the inherent jurisdiction under Section 482, Cr.P.C, would be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself viz., to give effect to any order under Cr.P.C., or to prevent abuse of process of any Court or otherwise to secure the ends of justice.
7. In the decision in ***Arvind Barsaul (Dr.) v. State of M.P. [(2008) 5 SCC 794]***, this Court held that though offence under Section 498A, IPC is not compoundable, but when parties have compromised, continuance of proceedings would be an abuse of process of law and hence, could be quashed on a petition filed under Section 482, Cr.P.C. We referred to this decision to show that when the parties are *ad idem* for discontinuance of criminal proceedings which are not of grave nature, power under Section 482, Cr.P.C. is exercisable.
8. Now, we will refer to Section 147 of the N.I. Act and it reads thus: -

"147. Offence 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."
9. Thus, a bare perusal of Section 482, Cr.P.C., and Section 147, N.I. Act would reveal they are different and distinct. The former being the inherent power of High Court exercisable even *suo motu* to give effect to any order under Cr.P.C., or to prevent abuse of the process of any court or otherwise to secure the ends of justice. However, the provision for compounding every offence punishable under the N.I. Act, under Section 147, N.I. Act, is not a power available to a Court to exercise without the consent of the complainant. We will dilate on this aspect a little later.
10. Now, in the context of the rival contentions, it is worthwhile to note that by the combined exercise of powers under Section 482, Cr.P.C., and Section 147, N.I. Act, the High Court, has actually compounded the offence, under Section 138, N.I. Act, despite the non-consent of

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the complainant/ appellant herein therefor. Contextually, it is relevant to refer to paragraph 102 (6) of the decision of this Court in *State of Haryana v. Bhajan Lal (AIR 1992 SC 604)*, which reads thus: -

“Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

(underline supplied)

11. It is thus well-neigh settled position that the inherent powers under Section 482, Cr.P.C., are invocable when no other efficacious remedy is available to the party concerned and not where a specific remedy is provided by the statute concerned. We may further add here that certainly the power under Section 482, Cr.P.C., is not invocable, ignoring the factor which is *sine qua non* for the exercise of power to compound the offence(s) under N.I. Act viz., the consent of the complainant.
12. Before delving into the question whether consent of the complainant, who is to compound the offence, is required to exercise the power under Section 147, N.I. Act, it is only appropriate to refer to paragraphs 12 and 13 of the impugned judgment of the High Court. They read thus: -

“12. Broadly speaking, in the considered opinion of this Court, the essence of all the aforesaid pronouncements by the Hon’ble Supreme Court coupled with Section 138 of the N.I. Act read together with the other provisions of the N.I. Act is that the consent of the complainant is not mandatory at the time of compounding of the offence under Section 138 of the N.I. Act, once the complainant has been equitably compensated.

13. In effect, whence the complainant has been reasonably compensated the accused can be discharged/ acquitted even without the consent of the complainant, in the interest of justice and to prevent the abuse of the process of law,

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since once an accused accepts his liability to pay the cheque amount, there will be no fruitful purpose in keeping the complaint alive."

(Underline supplied)

13. Having gone through the factual matrix of the case on hand and the afore-extracted paragraph Nos. 12 and 13 of the impugned judgment, we are of the considered view that the understanding and exposition of law by the High Court on the question of invocation of the power under Section 482, Cr.P.C., and Section 147, N.I. Act to compound the offence under Section 138, N.I. Act, run contrary to the law enunciated by this Court on the said question. In the light of the decisions of this Court in Damodar S. Prabhu v. Sayed Babalal H. [(2010) 5 SCC 663], K.M. Ibrahim v. K.P. Mohammed & Anr. [(2010) 1 SCC 798] and O.P. Dholakia v. State of Haryana & Anr. [(2000) 1 SCC 762], there cannot be any doubt with regard to the position that offence under Section 138, N.I. Act could be compounded under Section 147, N.I. Act, at any stage of the proceedings.
14. As relates the requirement of ‘consent’ for compounding offence under Section 138, N.I. Act, by invoking the power under Section 147, N.I. Act, it is to be noted that the question is no longer *res integra*. This Court in the decision in JIK Industries Ltd. & Ors v. Amaral V.Jumani & Anr. [(2012) 3 SCC 255] declined to accept the contention that in view of the non-obstante clause in Section 147, NI Act, which is a special statute, the requirement of consent of the person compounding the offence under Section 138, N.I. Act, is not required. After extracting provision under Section 147, N.I. Act, this Court in JIK Industries Ltd. case (supra) observed and held in paragraph 58 and 59 thereof thus: -

"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], 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.

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59. This Court is unable to accept the aforesaid contention for various reasons which are discussed below."

15. In the contextual situation it is relevant to refer to a recent decision of this Court in [Raj Reddy Kallem v. The State of Haryana & Anr. \[2024 INSC 347\]](#). The said decision would reveal that this Court took note of earlier decisions of this Court in [JIK Industries Ltd.](#) case (supra) as also in the decision in [Meters and Instruments Private Ltd. & Anr. V. Kanchan Mehta \[\(2018\) 1 SCC 560\]](#) and in unambiguous terms held that for compounding the offence under Section 138, N.I. Act, 'consent' of the complainant is required. In Kanchan Mehta's case (supra) even after referring to the decision in [JIK Industries Ltd.](#) case (supra) this Court held that even in the absence of 'consent' Court could close criminal proceedings against an accused in a case under Section 138, N.I. Act, if the accused had compensated the complainant. It was held therein thus: -

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.

16. But then, it is to be noted that later a five-Judge Constitution Bench in [Expeditious Trial of Cases Under Section 138, N.I. Act, 1881, In re \(2021\) 16 SCC 116](#) held that observation in Kanchan Mehta's decision giving discretion to the trial Court "to close the proceedings and discharge the accused", by reading Section 258, Cr.P.C., which confers the power to stop proceeding in certain cases, 'not a good law'. In [Raj Reddy Kallem's](#) case (supra), after referring to the above positions this Court further observed that even in Kanchan Mehta's case (supra) nowhere it was contemplated that 'compounding' could be done without the 'consent' of the parties. It is worthwhile to note at this juncture that in [Raj Reddy Kallem's](#) case this Court drew nice distinction between 'quashing of a case' and 'compounding an offence'. To drive that point home, this Court referred to the decision in [JIK Industries Ltd.](#) case (supra), where this Court distinguished the quashing of a case from compounding as hereunder: -

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"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."

17. It is in the aforesaid circumstances that we held that the question whether the offence under Section 138, N.I. Act could be compounded invoking the power under Section 147, N.I. Act, without consent of the complainant concerned, is no longer *res integra*. In short, the position is 'that an offence under Section 138, N.I. Act could be compounded under Section 147 thereof, only with the consent of the complainant concerned'. In that view of the matter, the impugned judgment of the High Court wherein despite the absence of the consent of the appellant-complainant compounded the offence under Section 138, N.I. Act, on the ground that the appellant was equitably compensated, could not be sustained.
18. In the context of the issues involved another aspect of the matter also requires consideration. The decision in Raj Reddy Kallem's case (supra), also stands on a similar footing inasmuch as the complainant therein was duly compensated by the accused but the complainant did not agree for compounding the offence. After observing that, Courts could not compel the complainant to give consent for compounding the offence under Section 138, N.I. Act, this Court in Raj Reddy Kallem's case (supra) took note of the peculiar factual situation obtained and invoked the power under Section 142 of the Constitution of India to quash the proceeding pending against the appellant-accused under Section 138, N.I. Act. True that in Raj Reddy Kallem's case it was despite the non-consent of the complainant-respondent that the proceedings were quashed against the appellant therein, *inter alia*, taking note of the fact that the accused therein had compensated the complainant and furthermore deposited the additional amount, as has been ordered by this Court. We have no doubt in holding that merely because taking into account such aspects and circumstances this Court 'quashed' the proceedings by invocation of the power under Article 142 of the Constitution of India, cannot be a reason for 'compounding' an offence under Section 138, N.I. Act, invoking the power under Section 482, Cr.P.C. and the power under Section 147, N.I. Act, in the absence of consent of the complainant concerned in view of the decision referred hereinbefore. In this context, this is to be noted that the fact that this Court quashed the proceedings

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under Section 138, N.I. Act, invoking the power under Article 142 of the Constitution of India can be no reason at all for High Courts to pass an order quashing proceeding under Section 138, N.I. Act, on the similar lines as the power under Article 142 of the Constitution of India is available only to the Supreme Court of India. In this context it is relevant to refer to the three-Judge Bench of this Court in State of Punjab & Ors. v. Surinder Kumar & Ors. [(1992) 1 SCC 489], this Court in paragraph 6 to 8 therein held thus: -

6. A decision is available as a precedent only if it decides a question of law. The respondents are, therefore, not entitled to rely upon an order of this Court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds are not mentioned in a judgment of this Court, it cannot be understood to have been passed without an adequate legal basis therefor. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a court whose judgment is not subject to further appeal and other courts. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to enable a higher court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgment, but the requirement is not imperative in the case of this Court. It is, therefore, futile to suggest that if this Court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge.

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7. It is true that the High Court is entitled to exercise its judicial discretion in deciding writ petitions or civil revision applications but this discretion has to be confined in declining to entertain petitions and refusing to grant relief, asked for by petitioners, on adequate considerations; and it does not permit the High Court to grant relief on such a consideration alone.

8. We, therefore, reject the argument addressed on behalf of the respondents that the High Court was entitled to pass any order which it thought fit in the interest of justice. Accordingly, we set aside the impugned order and allow the appeal, but in the circumstances without costs.

19. The upshot of the discussion is that the High Court had clearly fallen in error in invoking the power under Section 482, Cr.P.C., as also the power under Section 147, N.I. Act, to compound the offence under Section 138 of the N.I. Act *qua* the respondent-accused. Hence, the impugned judgment to the extent it compounded the offence under Section 138, N.I. Act invoking the inherent power under Section 482, Cr.P.C. and the power under Section 147, N.I. Act stands quashed and set aside.
20. However, the position is that the respondents have, by now, deposited an amount of Rs. 6,50,000/- along with 12% simple interest per annum from the date of cheque till the date of actual payment besides a sum of Rs. 1 lakh payable additionally, as ordered under the impugned judgment before the trial court. Therefore, the amount is available to be withdrawn by the appellant-complainant.
21. In view of the peculiar position thus obtained with respect to the deposit of the amount payable under the impugned judgment, the fact that the dishonored cheque Nos.17632 dated 19.01.2020 and 17633 dated 09.02.2020 were respectively for Rs.3,00,000/- and Rs.3,50,000/- and the further fact that upon receiving the summons, the respondent-accused have expressed their readiness to effect the payment and to settle the matter, we are of the considered view that there is no point in restoring the proceedings and to permit their continuance before the trial Court, though we have set aside the impugned judgment to the extent it compounded the offence under Section 138, of the N.I. Act, invoking the power under Section 482, Cr.P.C., and Section 147, N.I. Act. Hence, despite the lack of consent

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from the appellant-complainant, we found that it is a befitting case to invoke the power of this Court under Article 142 of the Constitution of India to do complete justice between the parties and to quash Complaint Case No.5564 of 2022 as also all proceedings emerging therefrom. Hence, Complaint Case No. 5564 of 2022, pending before the Court of MM (N.I. Act), Digital Court-02/SED, Saket District Courts and all the further proceedings therefrom stand set aside and quashed. The appellant-complainant will be entitled to withdraw, in accordance with law, entire amount in deposit before the trial Court viz., Rs.6,50,000/- along with 12% simple interest per annum from the date of the cheque in question till the date of actual payment along with the additionally paid Rs.1,00,000/-. We make it clear that observations, if any, made in this case are solely for the purpose of deciding the captioned appeals.

- 22.** The appeals stand disposed of on the above terms.

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

Result of the case: Appeals disposed of.

[†]Headnotes prepared by: Divya Pandey