

M/s New Win Export & Anr.

v.

A. Subramaniam

(Criminal Appeal No. 2948 of 2024)

11 July 2024

[Sudhanshu Dhulia and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

Whether in the instant case, conviction under Section 138 of the Negotiable Instruments Act, 1881 could be quashed by the Supreme Court as the parties had settled the dispute among themselves by entering into a settlement agreement.

Headnotes[†]

Negotiable Instruments Act, 1881 – s.138 – Offence under – Compounding of – Settlement treated to be compounding of the offence:

Held: Appellants and respondent-complainant had entered into a settlement agreement dated 27.01.2024 – It is clear that the parties have settled the dispute among themselves – As per the agreement, the appellants have paid Rs.5,25,000 to the respondent-complainant, who has agreed to settle the present matter for the said amount – The complainant does not have any objection if the conviction of the appellants is set aside – This settlement agreement can be treated to be compounding of the offence – When the accused and complainant have reached a settlement permissible by law and this Court has also satisfied itself regarding the genuineness of the settlement, the conviction of the appellants would not serve any purpose and thus, it is required to be set aside. [Paras 3, 4, 5]

Negotiable Instruments Act, 1881 – s.147 – Compounding of offences in context of the Act – Dishonour of cheques is a regulatory offence – ‘compensatory aspect’ of remedy has priority over ‘punitive aspect’ – Code of Criminal Procedure, 1973 – s.320(5):

Held: Dishonour of cheques is a regulatory offence which was made an offence only in view of public interest so that the reliability

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of these instruments can be ensured – s.147 of Negotiable Instruments Act, 1881 makes all offences under NI Act compoundable offences – All the same, s.320(5) CrPC provides that if compounding has to be done after conviction, then it can only be done with the leave of the Court where appeal against such conviction is pending – Keeping in mind that the ‘compensatory aspect’ of remedy shall have priority over the ‘punitive aspect’, courts should encourage compounding of offences under the NI Act if parties are willing to do so. [Paras 4, 6]

Case Law Cited

Raj Reddy Kallem v. The State of Haryana & Anr. [\[2024\] 5 SCR 203](#); *Damodar S. Prabhu v. Sayed Babalal H.* [\[2010\] 5 SCR 678](#) : (2010) 5 SCC 663; *Gimpex Private Limited v. Manoj Goel* [\[2021\] 11 SCR 432](#) : (2022) 11 SCC 705; *Meters and Instruments Private Limited and Anr. v. Kanchan Mehta* [\[2017\] 10 SCR 66](#) : (2018) 1 SCC 560 – referred to.

List of Acts

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

List of Keywords

Section 138 Negotiable Instruments Act, 1881; Insufficient funds; Settlement agreement; Compoundable offences; Compounding of the offence; Compounding after conviction; Compensatory aspect of remedy.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2948 of 2024

From the Judgment and Order dated 01.04.2019 of the High Court of Judicature at Madras in CRLA No. 45 of 2014

Appearances for Parties

M Yogesh Kanna, K. Paari Vendhan, Manoj Kumar A, Advs. for the Appellants.

Sudhakar Rajendran, Vairawan A.S, Advs. for the Respondent.

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Leave granted.

2. This case arises from a complaint under Section 138 Negotiable Instruments Act filed by the respondent/complainant. In the year 2006, appellant no.2 had borrowed a loan of Rs.5,25,000 from the respondent but did not repay as promised. To discharge the said debt, the appellant no.2 gave a cheque of Rs.5,25,000 which was issued in the name of his partnership firm i.e., appellant no.1 (M/s New Win Export). Since the cheque was dishonoured due to 'insufficient funds', respondent filed a complaint under Section 138 NI Act against the appellants where the Trial Court vide order dated 16.10.2012 convicted the appellants and imposed a sentence of 1 year of simple imprisonment each. The appellants challenged their conviction before the Appellate Court, which reversed the findings of the Trial Court and acquitted the appellants. Finally, when the matter was taken to the High Court at the instance of the respondent/complainant, the High Court in its order dated 01.04.2019 set-aside the order of the Appellate Court and restored the order of the Trial Court, convicting the appellants. Now, the appellants are before this Court.
3. We have been apprised at the bar that before filing the present appeal, appellants and respondent-complainant had entered into a settlement agreement dated 27.01.2024. We have perused the settlement document and from the terms of the agreement, it is clear that the parties have settled the dispute among themselves. As per the agreement, the appellants have paid Rs.5,25,000 to the respondent-complainant, who has agreed to settle the present matter for the said amount. Also, the complainant does not have any objection if the conviction of the appellants is set aside. The relevant portion of the said settlement agreement is reproduced below where the expression 'First Party' is used for the respondent-complainant and accused-appellant has been called as the 'Second Party':

".....The First Party and the second Party had agreed to settle their dispute between them at a final settlement of Rs.5,25,000/- (Five Lakhs and twenty five thousand only) and the First party had. received a sum of Rs.5,25,000/ (Five Lakhs and. twenty five thousand only) by way of Demand draft dated 08.12.2023 bearing No.135744 drawn

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on Union Bank, Perunthozhuvu Branch received from the second party.

5. The First Party agrees to accept the final settlement amount of Rs.5,25, 000/- (Five Lakhs and twenty five thousand only) and the First Party had received the sum of Rs.5,25,000/- (Five Lakhs and twenty five thousand only) from the Second party as mentioned above.

6. After the execution of the present Settlement Agreement, the Second Party is intending to file a Special Leave Petition before the Honourable Supreme Court of India and the First Party agrees to support the Special Leave Petition filed by the Second Party, in order to enable the Hon'ble Supreme Court of India to pass appropriate order as the Hon'ble supreme Court may deem it fit and proper in the facts and circumstances of the present.

7. The First Party will have no objection if the conviction of the Second Party is set aside by the Hon'ble Supreme Court of India."

4. Section 147 of the Negotiable Instruments Act, 1881 makes all offences under NI Act compoundable offences. In our opinion, this settlement agreement can be treated to be compounding of the offence. All the same, Section 320 (5) of CrPC provides that if compounding has to be done after conviction, then it can only be done with the leave of the Court where appeal against such conviction is pending.
5. In cases where the accused relies upon some document for compounding the offence at the appellate stage, courts shall try to check the veracity of such document, which can be done in multiple ways. For the same, in the present matter, this Court vide order dated 18.03.2024 had asked the respondent-complainant to file an affidavit to bring on record whether or not any compromise has been reached between the parties. In compliance with the said order, the respondent-complainant has filed before us an affidavit dated 27.03.2024 supporting the case of the appellants wherein it is admitted that the accused have paid the amount to the satisfaction of the complainant and further it is said that he has no objection if conviction of the appellants is set aside. Now, when the accused and complainant have reached a settlement permissible by law and this Court has also satisfied itself regarding the genuineness of the

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settlement, we think that the conviction of the appellants would not serve any purpose and thus, it is required to be set aside.

6. At this juncture, we would also like to reiterate a few words regarding the principles of compounding of offences in the context of NI Act. It is to be remembered that dishonour of cheques is a regulatory offence which was made an offence only in view of public interest so that the reliability of these instruments can be ensured. A large number of cases involving dishonour of cheques are pending before courts which is a serious concern for our judicial system. Keeping in mind that the ‘compensatory aspect’ of remedy shall have priority over the ‘punitive aspect’, courts should encourage compounding of offences under the NI Act if parties are willing to do so. (See: Damodar S. Prabhu v. Sayed Babalal H. (2010) 5 SCC 663,¹ Gimpex Private Limited v. Manoj Goel (2022) 11 SCC 705,² Meters And Instruments Private Limited And Anr. v. Kanchan Mehta (2018) 1 SCC 560³)
7. In Raj Reddy Kallem v. The State of Haryana & Anr. [2024] 5 SCR 203, this Court followed the same principles and quashed a conviction under the NI Act, by invoking its powers under Article 142, even though the complainant therein declined to give consent for compounding, observing that the accused has sufficiently compensated the complainant.
8. Considering the totality of the circumstances and compromise between the parties, we allow this appeal and acquit the appellants by setting aside the impugned order dated 01.04.2019 as well the Trial Court’s order dated 16.10.2012. Appellant no.2, who was exempted from surrendering by this Court, need not surrender and his sureties are hereby discharged.

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

Result of the case: Appeal allowed

¹Headnotes prepared by: Bibhuti Bhushan Bose

(With assistance from: Sanyam Mishra, LCRA)

1 Para 18

2 Para 29

3 Para 18.2