

4. It is alleged that the Appellants, under the guise of making investments took money from Respondent No.2 and made wrongful gain for their profits.

5. After the Appellants' conviction, A revision was preferred by them in the High Court It is important to note that during the course of the revision filed by the Appellants, the parties entered into a Memorandum of Understanding to settle the dispute within themselves.

6. Clause 8 of the Memorandum Of Understanding stated that the dispute was to be settled amicably, and in the event of the dispute still not being amicably resolved, it must be first referred to a sole Arbitrator. Clause 8 of the said Memorandum Of Understanding is as under:-

“That any dispute under this document shall be resolved amicably. In the event the dispute is not resolved amicably, the matter shall be referred to the sole arbitration of Shri Jonnalagadda Srinivasa Rao S/o Venkaiah whose decision shall be final and binding on all the parties. On entering reference, the sole arbitrator shall hear the parties and pass award. The provisions of arbitration and conciliation act shall apply to the arbitration proceedings. The place of arbitration shall be Ongole only.

7. It is also to be noted that as per the terms of the agreement, the Respondent No.2 was bound to file a compromise petition before the High Court, however he failed to do so. The lack of filing of such a compromise petition, as agreed upon by the Respondent No.2, has now led to the High Court dismissing the Revision and confirming the Conviction of the Appellants.

8. In our view, the terms and conditions of the settlement entered into by the parties binds them to settle the dispute amicably, or through an arbitration as has been stated in clause 8 of the Memorandum Of Understanding.

9. In such a circumstance, the Appellants cannot be convicted on the basis of the orders passed by the courts below, as the settlement is nothing but a compounding of the offence.

10. In the case of M/S Meters and Instruments Private Limited & Anr. Vs Kanchan Mehta¹, this court held that the nature of offence under section 138 of the N.I Act is primarily related to a civil wrong and has been specifically 1 2018 (1) SCC 560 made a compoundable offence. The relevant paragraph of the judgment has been extracted herein:

“This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions' cheques were issued merely as a device to defraud the creditors. Dishonor of cheque causes incalculable loss, injury and inconvenience to the Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 payee and credibility of business transactions suffers a setback. At the same time, it was also noted that nature of offence under Section 138

primarily related to a civil wrong and the 2002 amendment specifically made it compoundable.”

11. This is a very clear case of the parties entering into an agreement and compounding the offence to save themselves from the process of litigation. When such a step has been taken by the parties, and the law very clearly allows them to do the same, the High Court then cannot override such compounding and impose its will.

12. It must also be noted that the Respondent No.2 was duty bound to file a compromise petition before the High Court, and by not doing the same has withdrawn key information from the High Court, which has led to an unwarranted confirmation of the Appellants’ conviction.

13. We, therefore, allow these Appeals and set aside the order of conviction passed by the trial court. It is, however, kept open to the parties to settle their dispute as per the terms of the Memorandum Of Understanding.

.....J.

(KRISHNA MURARI)J.

(V. RAMASUBRAMANIAN) NEW DELHI;

01st February, 2023