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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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Date of decision: 18.05.2024

SURINDER KUMAR BINDAL AND ANOTHER

-Petitioners

Versus

SATINDER NATH RADHEY SHYAM AND SONS

-Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Shreenath A. Khemka, Advocate
for the petitioners.

Mr. Rishab Gupta, Advocate for the respondent.

KULDEEP TIWARI, J.

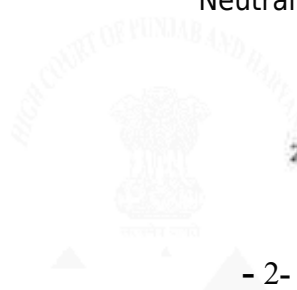
1. Through the instant petition, as instituted under Section 482 Cr.P.C, the petitioners assail the order dated 04.04.2024 (Annexure P-8), whereby, the learned Additional District Judge concerned has dismissed the petitioners' application filed under Section 147 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act'), thereby seeking compounding of the offence.

2. Before penning down any opinion, thus adjudicating the legality of the order (*supra*), it is deemed apt to first deal with the facts of the present matter.

3. Consequent upon the complainant/respondent herein filing a complaint under Section 138 read with Section 142 of the N.I. Act, the petitioners were, vide order dated 30.04.2016, summoned to face trial. The trial launched against the petitioners culminated in their conviction, whereupon, the learned trial



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Court concerned, vide verdict of conviction and order of sentence dated 17.04.2018, held the petitioners guilty for commission of offence punishable under Section 138 of the N.I. Act and sentenced them to undergo imprisonment for a period of two years and to pay a sum of Rs.25,00,000/- each, i.e. the amount of cheque in question, out of which Rs.5,000/- each was directed to be paid as fine and remaining amount was directed to be treated as compensation to the complainant.

4. Fetching grievance from the verdict of conviction and order of sentence (supra), the petitioners preferred a statutory appeal before the learned first appellate Court concerned, which has been assigned No. CRA/91/2018 and stated to be yet pending adjudication.

5. During pendency of the statutory appeal, the petitioners filed an application under Section 147 of the N.I. Act, thereby seeking compounding of the offence, by making payment of the cheque amount. However, owing to refusal/unwillingness expressed by the complainant/respondent herein for compounding of the offence, the learned first appellate Court concerned proceeded to dismiss the said application vide the impugned order dated 04.04.2024, with the observation that, the cheque amount in question is not sufficient compensation. Consequently, the impugned order dated 04.04.2024 has propelled the petitioners to institute the instant petition.

6. Although the petitioners have, apart from canvassing grounds for compounding of the offence, raised some other issues as well, but, at this stage, this Court refrains from entertaining all those issues, as the same are available to be agitated before the learned first appellate Court concerned. The sole issue



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requiring consideration at this stage is “*whether the lack of consent by the complainant/respondent herein can restrict or not the jurisdiction of courts to compound the offence under Section 138 of the Negotiable Instruments Act?*”

7. The learned counsel for the petitioners submits that this issue is no more *res integra*, inasmuch as, the Hon’ble Supreme Court in case titled as “*M/s Meters and Instruments Primate Limited and another Vs. Kanchan Mehta*”, *AIR 2017 Supreme Court 4594*, concluded that compounding can be done without the consent of the parties too, as Section 147 of the N.I. Act although renders consent to be a significant factor for compounding of offence, but does not make it a mandatory condition. The learned trial Court concerned cannot discharge the accused by exercising powers under Section 258 Cr.P.C. The relevant paragraph of this judgment reads as under:-

“18. From the above discussion following aspects emerge:

i) XX XX XX XX XX XX

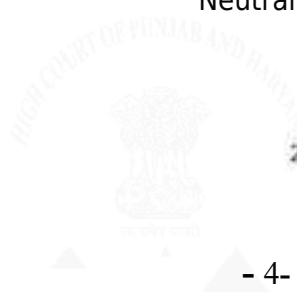
ii) XX XX XX XX XX XX

iii) *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.”*

8. The learned counsel for the petitioners further places reliance upon a verdict passed by the Hon'ble Supreme Court in case of “*Damodar S. Prabhu Vs. Sayed Babalal H.*”, *Criminal Appeal No.963 of 2010 [arising out of SLP (Crl) No.6369 of 2007]*, to submit that Section 320 Cr.P.C. is not applicable in cases of N.I. Act, as Section 147 of the N.I. Act was inserted by way of an amendment to a special law and the same will override the effect of Section 320(9) Cr.P.C., especially keeping in mind that Section 147 of the N.I. Act carries a non-obstante



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clause.

9. The learned counsel for the petitioners further submits that although the application seeking compounding of offence was then accompanied by a proposal for payment of the cheque amount only, but now at this stage, the petitioners are also ready and willing to, apart from the cheque amount, offer the entire compensation amount imposed upon them by the learned trial Court concerned. Therefore, when the respondent has been adequately compensated, so even in the absence of his consent for compounding of offence, this Court can allow the petitioners' compounding application.

10. The learned counsel for the petitioners further places reliance upon a judgment passed by the Bombay High Court in "*Anuradha Kapoor and Others Vs. State of Maharashtra through Police Station Officer and Another*", 2023 SCC OnLine Bom 2543, whereby, the Bombay High Court has, in the absence of complainant's consent, proceeded to quash the complaint on account of the complainant becoming adequately compensated. He also places reliance upon a judgment passed by a Co-ordinate Bench of this Court in "*M/s K.K. Tanners and another Vs. M/s Pragati Enterprises and others*", bearing CRM-M-43388 of 2019, Decided on: 19.12.2023, wherein, the impugned complaint and verdict of conviction were set aside, by directing the petitioner therein to make payment of adequate compensation to the respondent.

11. On the other hand, the learned counsel for the respondent submits that the case at hand is not a fit and deserving case for compounding of offence, as the actual dispute is not with regard to Rs.50 lacs, rather the petitioners were otherwise required to pay an amount of Rs.1,73,56,543/-, which was outstanding



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as on 28.03.2016, and therefore, the cheque amount along with the compensation awarded by the learned trial Court concerned cannot be considered as adequate compensation.

12. The learned counsel for the respondent also submits that the ratio of law laid down by the Hon'ble Supreme Court in "*M/s Meters and Instruments Private Limited and another Vs. Kanchan Mehta*", 2017 (4) RCR (Criminal) 476 is very categorical and specific that consent is the essence for compounding under Section 147 of the N.I. Act, and, in the absence of consent, no compounding is possible. For this, he further places reliance upon a recent judgment passed by the Hon'ble Supreme Court in "*Raj Reddy Kallem vs. The State of Haryana and another*" (2024 INSC 347) and submits that it has categorically been held therein that in the case of *M/s Meters and Instruments*, it has nowhere been held that compounding can be done without consent of the parties. He also submits that, the Hon'ble Supreme Court, in a Five Judge Bench judgment delivered subsequent to the making of judgment in *M/s Meters and Instruments's case*, observed the said judgment to be 'not a good law' in Expeditious Trial of Cases under Section 138 of the N.I. Act. The relevant portion of this judgment bearing No. Suo Motu Writ Petition (Crl.) No.2 of 2020, Decided on: 16.04.2021, reads as under:-

"24. The upshot of the above discussion leads us to the following conclusions:

1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.



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- 3) *For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.*
- 4) *We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.*
- 5) *The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.*
- 6) *Judgments of this Court in **Adalat Prasad** (supra) and **Subramanium Sethuraman** (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.*
- 7) *Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in **Meters and Instruments** (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.*
- 8) *All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee.”*

13. This Court has examined the submissions made by both the learned counsels for the parties and is of the view that the judgment rendered by the



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Hon'ble Supreme Court in *M/s Meters and Instruments' case* has become overruled to the extent that, the learned trial Court concerned could not discharge the accused, as the same is tried as a summon case. Furthermore, the Hon'ble Supreme Court has, in the case of *Raj Reddy Kallem's case*, held that without the consent of the complainant, the offence under Section 138 of the N.I. Act cannot be compounded with the aid of Section 147 of the N.I. Act. The relevant extract of this judgment reads as under:-

"This Court in Meters and Instruments private Ltd. And Another. v. Kanchan Mehta (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 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 116.**"*

14. Although the Hon'ble Supreme Court has, in the judgment (supra), proceeded to quash the proceedings after considering the peculiar facts of the said case, however, categorically held that consent is an integral part for compounding and until the complainant agrees for compounding of the offence, Courts cannot



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compel the complainant to give his/her consent for compounding of the offence. Furthermore, the Hon'ble Supreme Court has, after drawing a distinction between compounding and quashing, and, taking into consideration the facts and circumstances of that case, proceeded to quash the proceedings by exercising its inherent powers.

15. Insofar as ***Damodar S. Prabhu's case*** is concerned, the Hon'ble Supreme Court has laid down guidelines for a graded scheme of imposing cost on parties, who unduly delay the compounding of offence, and, to bring deterrent for delayed composition, recommended the guidelines for imposition of penalty. The relevant extract of the said judgment reads as under:-

“15. With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:-

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the



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Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

Let it also be clarified that any costs imposed in accordance with these guidelines should be deposited with the Legal Services Authority operating at the level of the Court before which compounding takes place. For instance, in case of compounding during the pendency of proceedings before a Magistrate's Court or a Court of Sessions, such costs should be deposited with the District Legal Services Authority. Likewise, costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with composition before the Supreme Court should be deposited with the National Legal Services Authority.”

16. The Hon'ble Supreme Court has, in ***Damodar S. Prabhu's case***, never held that consent is immaterial, rather held that even if the complainant is agreeing for compounding, the accused is required to be burdened with penalty for delayed compensation.

17. Furthermore, the Hon'ble Supreme Court has, in “***JIK Industries Limited & Others Versus Amarlal V. Jamuni & Another***”, (2012) 3 SCC 255, held that the consent is mandatory for compounding of offence under Section 138 of the N.I. Act. The relevant extract of this judgment reads as under:-

"68. Both these aforesaid decisions were referred to and approved in Damodar (supra). The decision in Damodar (supra) was rendered by



referring to Article 142 of the Constitution insofar as guidelines were framed in relation to compounding for reducing pendency of 138 cases. In doing so the Court held that attempts should be made for compounding the offence early. Therefore, the observations made in paragraph 24 of Damodar (supra), that the scheme contemplated under Section 320 of the Code cannot be followed in the strict sense' does not and cannot mean that the fundamental provisions of compounding under Section 320 of the Code stand obliterated by a side wind, as it were.

69. It is well settled that a judgment is always an authority for what it decides. It is equally well settled that a judgment cannot be read as a statute. It has to be read in the context of the facts discussed in it. Following the aforesaid well settled principles, we hold that the basic mode and manner of effecting the compounding of an offence under Section 320 of the Code cannot be said to be not attracted in case of compounding of an offence under Negotiable Instruments in view of Section 147 of the same.

73. In our country also when the Criminal Procedure Code, 1861 was enacted it was silent about the compounding of offence. Subsequently, when the next Code of 1872 was introduced it mentioned about compounding in Section 188 by providing the mode of compounding. However, it did not contain any provision declaring what offences were compoundable. The decision as to what offences were compoundable was governed by reference to the exception to Section 214 of the Indian Penal Code. The subsequent Code of 1898 provided Section 345 indicating the offences which were compoundable but the said Section was only made applicable to compounding of offences defined and permissible under Indian Penal code. The present Code, which repealed the 1898 Code, contains Section 320 containing comprehensive provisions for compounding. A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a Code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of section 147 in the Negotiable Instruments Act, the



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entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence under the Negotiable Instruments Act, in that case the compounding of offence under Negotiable Instruments Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under Negotiable Instruments Act. Therefore, section 147 of the Negotiable Instruments Act must be reasonably construed to mean that as a result of the said Section the offences under Negotiable Instruments 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 Negotiable Instruments Act.”

18. Insofar as the reliance placed by the learned counsel for the petitioners upon **Anuradha Kapoor's case** is concerned, the said judgment has been passed by the Bombay High Court only while considering the ratio of law laid down in **M/s Meters and Instruments' case**, but, without taking note of the subsequent judgment delivered by a Five Judge Bench of the Hon'ble Supreme Court, in case bearing No. Suo Motu Writ Petition (Crl.) No.2 of 2020, Decided on: 16.04.2021. Therefore, in view of the recent law laid down by the Hon'ble Supreme Court in **Raj Reddy Kallem's case**, wherein, it has categorically been held that consent is an integral part for compounding of the offence, under Section 147 of the N.I. Act, this Court respectfully disagrees with the conclusion drawn by the Bombay High Court.

19. Finally, insofar as the reliance placed by the learned counsel for the petitioners on the judgment passed by a Co-ordinate Bench of this Court in **M/s**



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K.K. Tanners' case is concerned, in that case also, the Co-ordinate Bench has proceeded to quash the proceedings on the basis of facts and circumstances of that case, and therefore, it cannot at all be concluded that consent is not an integral part for compounding of offence.

20. In the instant matter, it reflects from the record that the dispute is not only with regard to Rs.50 lacs, rather the dispute between the petitioners and the complainant is with regard to an amount of Rs.1,73,56,543/-, which was outstanding as on 28.03.2016. Therefore, this Court cannot compel the complainant to give his consent, or, in the alternative exercise its powers under Section 482 Cr.P.C, without the consent of the complainant, for ordering compounding of the offence by directing the petitioner to make payment of the cheque amount and/or the compensation amount, which the petitioners have now themselves offered before this Court. Consequently, this Court does not find any illegality or perversity in the impugned order and the same is ordered to be upheld and the instant petition is ordered to be **dismissed**.

18.05.2024
Amandeep/dharamvir/devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No