

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 6141/2024

Omprakash Chauhan S/o Shri Jagan Lal Thekedar, R/o Kheda House, Soor Sagar, Alwar (Raj). (Presently Confined In District Jail Alwar).

----Petitioner

Versus

1. State Of Rajasthan, Through Pp Rajasthan High Court.
2. Gulshan Lal Bhatiya S/o Shri Alam Chand Bhatiya, R/o 74 Shanti Kunj, Alwar (Since Died) Through Legal Representative Manish Bhatiya S/o Gulshan Lal Bhatiya S/o Shri Alam Chand Bhatiya, R/o 74 Shanti Kunj, Alwar.

----Respondents

For Petitioner(s) : Mr. Gaurav Jain
Mr. Vijay Kumar Gupta
Mr. Prashant Khandelwal
Mr. Arpit Gupta

For Respondent(s) : Mr. M. S. Shekhawat, PP
Mr. Abhishek Bhardwaj, Amicus
Curaie with
Mr. Shatanu Sharma
Mr. Deepak Kumar Sharma

HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

Reserved on :: **24/09/2024**

Pronounced on :: **22/10/2024**

1. The present petition is filed under Section 528 of BNSS, 2023 with a prayer to quash and set aside the proceedings and conviction under Section 138 of Negotiable Instrument Act, 1881(hereinafter "the Act"), arising out of judgment dated 24.02.2011 qua dishonor of cheque, wherein the petitioner was convicted and sentenced to one-year simple imprisonment, on the ground of compromise entered in-between the parties.



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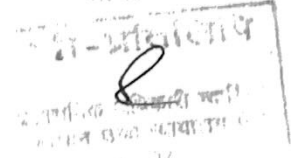
2. The factual matrix of the case is that the Respondent No.1 had filed a complaint against the petitioner under Section 138 of the Act, before the learned Trial Court alleging that the cheque bearing no.371816 dated 09.03.2007 for a sum of Rupees 100,000/- (Rupees One Lakh only) was dishonored due to insufficient funds, wherein the petitioner was convicted vide judgment dated 24.01.2011 and was awarded sentence for one year along with the fine amounting to Rupees 1,20,000/- (Rupees One Lakh Twenty Thousand Only).

3. Thereafter, being aggrieved by the said order of conviction and sentence, an appeal was preferred by the petitioner before the Appellant Court, wherein the judgment passed by the learned Trial Court was upheld vide judgment decree dated 21.09.2011.

4. Consequently, being further aggrieved, the petitioner left no stone unturned and approached the Co-ordinate Bench of this Court by filing a revision petition (**S.B. Criminal Revision Petition No. 1874/2011**), unfortunately the same was also dismissed vide judgment dated 21.08.2023, on the ground that pursuant to the order of the trial or appellant Court the petitioner had not surrendered and not remained in the custody at the time of filing present petition and since the dismissal of appeal dated 21.09.2011, for a period of 12 years the petitioner was avoiding the due process of law and was unable to appear in pursuance of aforesaid orders, therefore the petition was dismissed for non compliance.

5. Additionally, the fact of compromise was duly considered by the Coordinate Bench of this Court, and it was specifically averred as follows: -





"Sufficient time has been afforded to petitioner. **Learned counsel appearing for petitioner submits that parties have entered into a compromise** but to attest compromise, neither complainant is present, nor his authorized representatives is present before the Court.

On 21.09.2011 an appeal was dismissed and since then after 12 years this petitioner is avoiding the process of law and unable to appear in pursuant of aforesaid orders.

Further request for adjournment cannot be allowed and this petition is hereby dismissed for non-compliance.

Misc. application, if any, stands disposed of.

Before parting with the order, it appears that after dismissal of appeal on 21.09.2011, learned trial Court failed to ensure presence of present petitioner and to ensure that he is called served the sentence."

6. In this background, the present petition is filed by the petitioner on the ground of compromise, as the petitioner has been serving the sentence passed by the Trial Court and upheld by the subsequent Courts.

7. Learned counsel appearing on behalf of the petitioner had submitted that in terms of Section 138 and 147 of the Act and Section 320 of Cr.P.C, even post-conviction and after dismissal of appeal, if a compromise is recognized between the parties, the criminal proceedings can be quashed, as proceedings under Section 138 are primarily a civil wrong carrying penal consequences.

8. Learned counsel appearing on behalf of the petitioner had further submitted that proceeding under the provisions of Section 138 of the Act are quasi- criminal in nature and the primary aim of the Act is to ensure payment rather than awarding a punishment.

9. Additionally, it was submitted that Section 147 of the Act does not specify the appropriate stage qua which offences can be



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compounded, and offences punishable under the Act can be compounded in accordance with Section 147. Therefore, proceedings qua Section 138 of the Act are appropriate and amenable to compromise, which can be recognized at any stage of the proceeding.

10. Learned Counsel had placed reliance upon qua Section 138 and 147 of the Act and Section 320 of Cr.P.C, the dictum encapsulated in the judgment of Hon'ble Apex Court titled as **Damodar S. Prabhu Vs. Sayed Babalal H.** reported in **(2010) 5 SCC 663, Gian Singh VS. State of Punjab: (2012) 10 SCC 30** and judgment of the Hon'ble Madras High Court titled as **D. Simpson Vs. S. T. Perumal** reported in **2014 (1) MWN (Cr.) DCC 161 (Mad.)**. Lastly, reliance was placed upon **Raj Reddy Kallem Vs. The State of Haryana and Another: (2024) 5 SCR 203**.

11. Learned counsel had further placed reliance upon some other similar judgments, especially given by Coordinate Bench of this Court titled as **Naresh Kumar vs. State and Anr.**, reported in **S.B. Criminal Revision Petition No. 1267/2016**, wherein while dealing with a similar situation, Court had allowed the petition filed under Section 482 of Cr.P.C read with Section 147 of Negotiable Instrument Act, with a prayer to review/recall the order passed in revision petition, on the ground of compromise entered subsequently between the parties.

12. Learned counsel appearing on behalf of the petitioner had placed reliance upon the above-mentioned judgments, and submitted that, considering the above said submissions and ratio encapsulated under Section 482 of Cr.P.C., *pari materia* to the



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provision of Section 528 of BNSS, proceedings can be set aside even after the conviction and dismissal of appeal to the revision.

13. *Per contra*, learned Amicus Curiae in the instant matter, had submitted the question of law which falls for consideration, and submitted various arguments and judgments qua the same. Question is reproduced herein:-

"Whether an order passed by the Hon'ble High Court/equivalent Court in the criminal revision petition confirming the conviction can be nullified by the Hon'ble High Court in a petition filed under Section 482 of Cr.P.C. noticing subsequent compromise of the case by the contesting parties?"

14. Learned Amicus Curiae had submitted that the petitioner was not in custody despite the order of the Trial Court and was arrested only on 02.02.2024, subsequent to the dismissal of revision petition by the Co-ordinate Bench of this Court on 21.08.2023.

15. Additionally, highlighted the crucial fact qua review petition and provision under Section 362 of Cr.P.C, and submitted that the petition filed under Section 482 Cr.P.C is not maintainable for reviewing or recalling a judgment which was already passed by the Co-ordinate Bench, by confirming the conviction and sentence imposed by the learned Trial Court and exercise of power under Section 482 of Cr.P.C is subject to restriction imposed under Section 362 of Cr.P.C., which expressly prohibits the Court from reviewing or recalling its own judgment. For further clarification, the relevant provision of Section 362 Cr.P.C is reiterated as follows: -

"Section 362 Cr.P.C- Court not to alter judgment.



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- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

16. Furthermore, submitted that the Co-ordinate Bench of this Court had already duly considered the fact qua compromise, as well as the delayed and insouciant exhibited by the petitioner.

17. Additionally, had contested that when Coordinate Bench of this Court has concluded a finding, modification or alteration is precluded under Section 362 of Cr.P.C, except for clerical or arithmetical error. Moreover, in support of this argument, learned Amicus Curiae had placed reliance upon the ratio encapsulated in the Hon'ble Apex Court judgment titled as **Narayan Prasad Vs. State of Bihar** reported in **2019 (14) SCC 726**.

18. Considering the above said, had submitted that the present petition is essentially an application seeking a review of the order passed by Coordinate Bench in its revision jurisdiction, behind a smokescreen of quashing petition. Therefore, in accordance with the provisions of Section 362 and 397(3) of Cr.P.C, the review of said order is barred and cannot be entertained by this Court. The appropriate forum to address the issue would be the Hon'ble Apex Court.

19. Learned amicus curiae had also placed reliance upon the dictum enunciated in the judgment of the Hon'ble Supreme Court titled as **Ramavatar Vs. State of Madhya Pradesh** reported in **MANU/SC/0967/2021**, wherein Court held that the inherent powers under Section 482 of Cr.P.C akin to Section 528 BNSS, are exercisable in post-conviction matter only where, an appeal is



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pending before one or another judicial forum. This is on the premise that an order of conviction does not attain finality till the accused has exhausted his/her remedies and the finality is *sub-judice* before an Appellant Court. Moreover, the pendency of legal proceeding may before the final court is *sine qua non* to involve the superior court plenary power to do complete justice.

20. Lastly, submitted that in the present case, a Coordinate Bench of this Court, while exercising its revisionary powers, dismissed the revision petition on the same factual grounds, deeming the compromise to be a lackadaisical approach. As such, this Court cannot re-evaluate or re-appreciate the matter afresh on the same set of facts.

21. In summation of the above-said, this Court considering the facts and circumstances of the case, the submissions made by the learned counsel for the parties, the judgments cited at the bar, and the observations made by the Co-ordinate Bench, has made the following observations: -

21.1 That the proceedings under the provision of Section 138 of the Act, were initiated in the year 2007, and order qua the same Trial Court rendered its on 24.01.2011, imposing both a sentence and compensation of Rs. 20,000/-.

21.2 That the Appellate court dismissed the appeal on 21.09.2011 and the revision petition tilted as SB Criminal Revision No. 1874/2011, was dismissed on 21.08.2023 by the Co-ordinate Bench of this Court.

21.3 Consequently, the petitioner was arrested on 02.09.2024.

22. Therefore, this Court is not inclined to interfere with the decision of Co-ordinate Bench for the following reasons: -



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22.1 That the Coordinate Bench of this Court, after considering the compromise entered in- between the parties, exercised its revisionary powers and, based on the same set of facts dismissed the said petition on 21.08.2023.

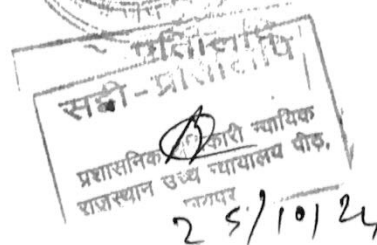
22.2 That no appeal/petition was preferred before the Apex Court or any Higher Court against the said order of dismissal, thereby rendering the dismissal order final and conclusive, with due consideration given to the fact of the compromise.

22.3 Further, taking note of Section 362 of Cr.P.C., and considering the dictum cited in the judgment of the Hon'ble Apex Court in **Narayan Prasad (Supra)** qua the same, wherein it is held that the provisions of Section 362 of Cr.P.C are absolute.

22.4 However, considering the provision of Section 362 of Cr.P.C read with Section 397 (3) of Cr.P.C, it is evident that the Code does not confer any power qua review upon the Court. Prima facie it appears to the Court that the present petition is, in essence, akin to a review petition, therefore due to the prohibition imposed by the above stated Section this Court is not inclined to interfere with the judgment rendered by the Co-ordinate Bench.

23. Accordingly, the present petition is dismissed. Pending applications, if any, stands disposed of.

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(SAMEER JAIN), J

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