

(2016) 05 JH CK 0187

In the Jharkhand High Court

Case No : Criminal Revision No. 916 Of 2015.

Abdul Quddus alias Abdul Kudush @ Abdul Kudush Ansari

APPELLANT

Vs

State of Jharkhand and another

RESPONDENT

Date of Decision : 17-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Negotiable Instruments Act, 1881 (NI) — Section 138, 147

Citation : (2016) ACD 593 : (2016) 2 BankJ 273 : (2017) 1 DCR 707 : (2016) 4 ECrC 220 : (2017) 1 NIJ 800

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Devesh Krishna, Advocate, for the Appellant; Sanjay Kumar Pandey-2, A.P.P and Arti Lalan Gupta, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ravi Nath Verma, J. - Invoking the Revisional jurisdiction of this Court under Sections 397 and 401 of the Code of Criminal Procedure (in short "the Code"), prayer has been made to set aside the judgment dated 04.07.2015 passed by learned Additional Judicial Commissioner-7th, Ranchi in Cr. Appeal No. 115 of 2014 whereby and where under while affirming the judgment of conviction and order of sentence passed against the petitioner under Section 138 of the Negotiable Instrument Act, the petitioner has been directed pay Rs.2,50,000/- to the complainant-opposite party no.2.

2. Heard the, learned counsel appearing for the petitioner as well as learned counsel for the opposite party no.2 and learned counsel representing the State.

3. It is not necessary to delve into the facts leading to the institution of proceedings, as the petitioner and opposite party no.2 have settled their dispute and have filed a joint compromise petition before this Court with a prayer to compound the offence as contemplated under Section 147 of the Act. However, a brief statement of facts is necessary for the proper appreciation: At the instance

of present complainant-opposite party no.2- Pawan Kumar, a Complaint Case no. 1432 of 2012 was filed against the present petitioner under Section 138 of Negotiable Instrument Act (in short "the Act") with the allegation that the accused-petitioner purchased poultry feed chicks, medicine and other materials from the shop of complainant and made payment by issuance of cheque of Rs.1,50,000 of Canara Bank in favour of Shushila Enterprises, but when the said cheque was presented for encashment in bank, it stood dishonoured due to "insufficient fund". The complaint sent a legal notice to the accused-petitioner in consonance with the provisions of the Act. Thereafter following the other formalities, the present complaint was filed when the accused-petitioner failed to pay the said amount. It appears from the record that the trial court after examination of the witnesses and considering the allegation and evidences on record, convicted the petitioner under Section 138 of the Act and sentenced him to undergo simple imprisonment for six months and also directed the accused petitioner to pay a compensation of Rs.2,00,000/-.

4. Aggrieved by the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Sessions court and after hearing both the parties, the appellate court affirmed the judgment of conviction but modified the compensation amount as indicated above. Hence, this revision.

5. During pendency of this revision application, both the parties settled their dispute outside the court and filed a joint compromise petition in Court by way of I.A. No.-2978 of 2016. After the direction of this Court to both the parties to be physically present in Court, they were present in Court and on enquiry, they fairly admitted the factum of compromise and filing of the joint compromise petition in this Court.

6. Apparently, the dispute relates to commercial transaction as the cheque issued by the petitioner was returned with endorsement "insufficient fund". The parties went through several stages of litigation and before this Court, they settled their disputes and filed the joint compromise petition. In the case of *O.P. Dholakia v. State of Haryana*; (2000) 1 SCC 762, the Hon"ble Supreme Court had permitted the compounding of the offence even though the conviction of the petitioners of that case had been upheld by all the courts with observation that the petitioner had already entered into a compromise with the complainant. The Hon"ble Supreme Court observed as follows:

"Taking into consideration the nature of the offence in question and the fact that the complainant and the accused has already entered into a compromise, we think it appropriate to grant permission in the peculiar facts and circumstances of the present case to compound."

7. The similar issue was also involved in *Siva Sankaran v. State of Kerala* and another ; (2002) 8 SCC 164 and *Sailesh Shyam Persekar v. Baban*; (2005) 4 SCC 162 and in both the cases, the Hon"ble Supreme Court held that Section 147 of the Act is in the nature of enabling provision, which provides for the

compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in subsection (9) of Section 320 of the Cr. P.C., which states that "no offence shall be compounded except as provided by this section". The compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible in a recent decision of the Hon"ble Supreme Court in Damodar S. Prabhu v. Sayed Babalal H.; (2010)3 East Cr. C. 123 (S.C.). In another recent judgment Gian Singh v. State of Punjab and another;(2012) 10 SCC 303, the Hon"ble Supreme Court has widened the scope and held that the offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted.

8. Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 of the said Act even at appellate stage of the proceedings. In Gian Singh v. State of Punjab and another (supra), the Hon"ble Supreme Court has bestowed the power to compound the offence even to Revisional Court in suitable cases. I have stated above that after filing of joint compromise petition, both the parties were physically present in Court and on enquiry, they fairly admitted that they have settled their dispute outside the court and now they have no grievance against each other. In that view of the matter, the parties are, hereby, allowed to compound the offence.

9. Hence, in the light of the ratio decided in the above cases, the conviction and sentence passed by the trial court i.e. the court of Judicial Magistrate, 1st Class, Ranchi in Complaint Case No. 1432 of 2012 against the petitioner and the affirmation of judgment and modification of sentence dated 04.07.2015 passed by the learned Additional Judicial Commissioner ? 7th, Ranchi in Cr. Appeal No.115 of 2014 are, hereby, set aside. The petitioner is acquitted of the charges. The petitioner, who is on bail, is, hereby, discharged from the liability of his bail bonds.

10. Accordingly, this revision application is, hereby, allowed.