

(2024) 02 GAU CK 0054
In the Gauhati High Court
Case No : Criminal Petition No. 207 Of 2024

Iqbal Hussain Laskar

APPELLANT

Vs

Ayaz Uddin Hazari And Anr

RESPONDENT

Date of Decision : 28-02-2024

Acts Referred:

Constitution Of India, 1950 — Article 136
Code Of Criminal Procedure, 1973 — Section 397, 482
Negotiable Instruments Act, 1881 — Section 138, 147

Citation : (2024) 02 GAU CK 0054

Hon'ble Judges : Mitali Thakuria, J

Bench : Single Bench

Advocate : A Y Choudhury

Final Decision : Disposed Of

Judgement

1. Heard Mr. A. Y. Choudhury, learned counsel for the petitioner. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor for the State respondent and Mr. K. Khemka, learned counsel appearing on behalf of the informant.

2. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 praying to compound the offence committed by the petitioner under Section 138 of the N.I. Act and further for setting aside and quashing the judgment and order dated 16.08.2018, passed by the learned Sessions Judge, Hailakandi in Criminal Appeal No. 44/2017, upholding the judgment and order passed by the learned Additional Chief Judicial Magistrate, Hailakandi in CR Case No. 10(A)/2015, convicting the present petitioner for the offence punishable under Section 138 of the N.I. Act and sentencing him to undergo SI for 6 (six) months and also to pay a sum of Rs. 2,00,000/- as compensation.

3. It is submitted by Mr. A. Y. Choudhury, learned counsel for the petitioner, that on being highly aggrieved and dissatisfied with the judgment and order passed by the learned Sessions Judge, Hailakandi in Criminal Appeal No. 44/2017 upholding the judgment and order passed by the learned Additional Chief Judicial

Magistrate, Hailakandi in CR Case No. 10(A)/2015, the present petitioner preferred a criminal revision petition along with one interlocutory application, being I.A. (Crl.) 136/2019, to condone the delay of 74 days in preferring the criminal revision petition. Accordingly the notice was also issued in the said interlocutory application. But the engaged counsel remained absent on several consecutive dates before this Court and finally on 19.10.2022, the said interlocutory application was dismissed for non-prosecution. However, it is the case of the petitioner that the fact of the dismissal of the said petition was never informed to the petitioner, rather the engaged counsel mislead the petitioner saying that the case is pending for disposal. As the said interlocutory application was dismissed, the revision petition was not admitted for hearing. Resultantly, the learned Court below issued warrant of arrest to secure the sentence and accordingly, on 17.02.2024, the present petitioner was arrested and since then, he is behind the bar.

4. Thereafter, there was a settlement between the petitioner and the respondent No. 1 and he received the entire compensation amount of Rs. 2,00,000/- as awarded by the learned Court below. In this connection, the wife of the petitioner executed a deed of compromise with the respondent No. 1 on behalf of the petitioner in presence of some middlemen and some elderly persons. Thus, the respondent No. 1 has no further objection or claim if the petitioner is acquitted by this Court in CR Case No. 10(A)/2015. The respondent No. 1 also issued a money receipt on 12.02.2024 acknowledging the receipt of Rs. 2,00,000/- from the petitioner which was paid by his wife by executing a compromise deed.

5. In view of above compromise between the parties, the present petition has been filed under Section 482 of the Code of Criminal Procedure to compound the offence committed by the petitioner under Section 138 of the N.I. Act and further prayed for quashing of the impugned judgment and order whereby the present petitioner was sentenced to undergo S.I. for 6 (six) months along with a sum of Rs. 2,00,000/- as compensation. To substantiate the plea, the learned counsel for the petitioner also relied on a decision of Hon'ble Allahabad High Court reported in 2021 SCC OnLine All 532 [Rishi Mohan Srivastava Vs. State of U.P.] and further emphasized on paragraph No. 21 of the judgment, which reads as under:

"21. In the case of Krishan Vs. Krishnaveni, reported in (1997) 4 SCC 241, Hon'ble the Apex Court has held that though the inherent power of the High Court is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may in its discretion prevent the abuse of process or miscarriage of justice by exercising jurisdiction under section 482 of the Code."

6. In this context, Mr. K. Khemka, learned counsel appearing on behalf of the

informant/respondent No. 2, has submitted that the matter has already been compromised between the parties and in pursuant to the said compromise, both the parties also executed a compromise agreement and the compromise deed was signed and executed through the wife of the present petitioner- Ms. Aysha Begum Laskar. Further it is submitted that after the execution of the said compromise deed, the respondent No. 2 also received Rs. 2,00,000/- towards the compensation of this case on 12.02.2024 and in that regard, the respondent No. 2 also issued a money receipt. Thus, the respondent/informant has no objection if the accused/petitioner is acquitted from this case.

7. After hearing the submissions made by the learned counsels appearing on behalf of the parties, it is seen that after the order of conviction passed by the learned Additional Chief Judicial Magistrate, Hailakandi and affirming the same by the learned Sessions Judge, Hailakandi, the petitioner preferred a revision petition before this Court with an interlocutory application to condone the delay of 74 days in preferring the revision petition. But, due to default of the petitioner, the said condonation petition could not be heard and thus, the criminal petition also could not be admitted for hearing and it was disposed of accordingly. Thereafter the petitioner was arrested in connection with this case on the strength of NBWA issued against him and presently he is behind the bar. After the arrest of the petitioner, a compromise deed was executed by his wife and the respondent No. 1 in presence of the middlemen and elderly persons and in pursuant to that settlement agreement, the wife of the petitioner, on his behalf, also made payment of Rs. 2,00,000/- towards the amount of compensation awarded by the learned Court below. On the strength of said compromise deed, the present petition has been filed praying for quashing of the judgment and order passed by the learned Court below complying the provision under Section 482 of the Code of Criminal Procedure.

8. So, the issue be decided here is as to whether after dismissal of the revision petition, the judgment and order can be quashed or set aside on the strength of compromise.

9. In the case of Rishi Mohan Srivastava (supra), as relied by the learned counsel for the petitioner, the Hon'ble Allahabad High Court, in paragraph No. 27 of the judgment, considered the fact that in special circumstances, the offence under N.I. Act can be compounded even after the disposal of the revision petition complying Section 482 Cr.P.C. Paragraph No. 30 of the said judgment, read as under:

"30. In a commentary the following observations have been made with regard to offence punishable under section 138 of the N.I. Act. [Cited from : Arun Mohan, Some thoughts towards law reforms on the topic of Section 138 Negotiable Instrument Act -Tackling an avalanche of cases]:

"... .. Unlike that for other forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a

means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

10. In the instant case also, it is a situation where the revision petition was dismissed not on the merit, as it could not be entertained as the interlocutory application for condonation of delay was dismissed due to fault of the engaged counsel and after dismissal of the revision petition, the petitioner was arrested on the strength of NBWA issued by the learned Court below and presently he is behind the bar.

11. The Hon'ble Orissa High Court in the case of Satragaon Patra Vs. Baikadanath Mahapatra (Criminal Revision Petition No. 1264/2010), reported in 2011 Supreme (Ori) 4, also passed the similar order relying on a decision of Hon'ble Apex Court passed in K. M. Ibrahim Vs. K. P. Mohammed & Anr., reported in (2010) 1 SCC 798, wherein, it has been held that "compounding of the offence under Section 147 of the Negotiable Instrument Act can be made even at the appellate stage and even in a proceeding under Article 136 of the Constitution."

12. The Hon'ble Calcutta High Court also in a case of Jitendra S Choudhari Vs. State of West Bengal & Anr., reported in 2020 0 Supreme (Cal) 252, has held that the Court can quash a conviction and sentence under Section 138 of the Negotiable Instrument Act on the ground of compromise and settlement subject to the guideline passed by the Hon'ble Supreme Court in case of Damodar S. Prabhu Vs. Sayed Babalal H., reported in (2010) 5 SCC 663. In the said case also, there was a delay of 504 days in filing the revision petition and before filing the revision petition, the compromise reached and accordingly both the petitioner as well as the respondent filed a joint compromise petition praying for quashing of the proceeding on the ground of compromise.

13. Further, in the case of Vinay Devanna Nayak Vs. Ryot Seva Sahkari Bank Limited, reported in AIR 2008 SC 716, the Hon'ble Apex Court has held as under:

"18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.

19. For the foregoing reasons the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the

appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him.”

14. The Hon’ble Apex Court in a case of Pravind Kumar Vs. Radhe Ballabh Mishra [Crl. A. 1123/2017, arising out of Special Leave Petition (Crl.) No. 9975/2016, reported in (2018) 12 SCC 48, in paragraph No. 6 of the judgment, has held that “since it is a proceeding under Section 138 of the Negotiable Instruments Act and since the first respondent has entered full satisfaction of the payments, and in view of the peculiar facts and circumstances of the transactions leading to the litigation, we are of the view that it will only in the interest of justice that the criminal proceedings which ended up in the conviction, are quashed in order to do complete justice between the parties.”

15. In the case in hand also, it is seen that after the dismissal of the revision petition, both the petitioner and the respondent arrived at a settlement and in pursuant to that settlement, the entire compensation amount of Rs. 2,00,000/- has already been paid to the respondent and to that effect, he also issued a money receipt acknowledging the receipt of the payment of the compensation amount. It is a fact that the compromise was not reached between the parties during the trial of the case and at the appellate stage. However, considering the view of the Hon’ble Apex Court, there can be compromise even at the stage of revision and after the order of conviction.

16. The Hon’ble Apex Court in the case of Damodar S. Prabhu (supra) has formulated some guidelines, which are reproduced hereinbelow:-

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

.....

(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.

17. But, here in the instant case, it is seen that the accused/ petitioner has already served with a sentence and he is behind the bar since 17.02.2024 arrested on the strength of the NBWA issued by the learned Court below and accordingly I find that the 15% of the cheque amount by way of costs as per the above referred Guideline (i)(c) of the Hon’ble Apex Court may not be applied to the present petitioner as he is already behind the bar in connection with this case since 17.02.2024 and the entire compensation amount of Rs. 2,00,000/- has already been paid.

18. In view of above, this Court is of the opinion that considering the special circumstances of this case, the power under Section 482 of the Code of Criminal Procedure can be exercised to secure the ends of justice and accordingly, the present criminal petition is allowed. The petitioner shall be treated as acquitted on account of compounding of offence with the complainant/respondent and in that view of the matter, the judgment and order dated 16.08.2018, passed by the learned Sessions Judge, Hailakandi in Criminal Appeal No. 44/2017, as well as the judgment and order dated 10.11.2017, passed by the learned Additional Chief Judicial Magistrate, Hailakandi in CR Case No. 10(A)/2015, are hereby set aside and quashed.

19. Copy of this order be sent to the learned Trial Court below. Further Superintendent of concerned Jail Authority is hereby directed to release the accused/petitioner- Iqbal Hussain Laskar on the strength of this order if not warranted in any other case.

20. In terms of above, the present criminal petition stands disposed of.