
(2012) 05 RAJ CK 0003

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 2668 of 2011

Madhu Kapoor

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 22-05-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 147

Citation : (2012) 4 WLN 537

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Nishant Bora and Mr. A.R. Nikub, P.P, for the Appellant; Shambhoo Singh, Advocate Respondent No. 2, for the Respondent

Judgement

Sandeep Mehta, J.—The instant Misc. Petition has been preferred by the petitioner seeking quashing of the proceedings pending in the Court of learned ACJM, Sagwara in Cr. Misc. Case No. 404/08 against him for the offence under Sec. 138 of the Negotiable Instruments Act. Learned counsel for the petitioner and the learned PP and also learned counsel for the respondent No. 2 states to this Court that during pendency of the proceeding before the trial Court, the complainant filed an application before the learned Magistrate on 24.11.2011 stating therein that he desired to withdraw the complaint, as the amount of cheque had been received by him and, therefore, the matter be decided by way of compromise. The application filed for the compromise was rejected by the learned Magistrate on 25.11.2011 and hence this Misc. Petition has been preferred by the petitioner seeking quashing of the proceedings of the complaint.

2. Learned counsel for the petitioner submits that by virtue of Section 147 of the N.I.Act, the offence under the said Act has been made compoundable and no permission of the Court is required for compounding the said offence. He, therefore, submits that since the complainant himself has filed an application before the trial Court for withdrawal of the complaint by effect of compromise, the learned Magistrate has committed grave error in rejecting the said

application and by insisting for continuance of the complaint.

3. Mr. Shambhoo Singh, learned counsel appearing on behalf of the complainant-respondent No. 2 does not dispute the fact that the complainant has voluntarily moved an application for compromise before the trial Court.

4. Considered the arguments advanced by the learned counsel for the parties at bar and perused the material available on record, particularly the certified copy of the application filed by the complainant before the trial Court seeking withdrawal of the complaint on the strength of the compromise. This Court is of the opinion that now by an amendment under the N.I. Act, Section 147 has been added to the N.I. Act and the offence under Sec. 138 of the N.I. Act has been made compoundable and that too, without permission of the Court. Since the complainant has filed an application for compromise in the matter before the trial Court, there was no discretion left with the trial Court to have refused such an application and, therefore, the proceedings of the complaint can not be permitted to be continued. Resultantly, the Misc. Petition succeeds and the proceedings pending in the Court of learned ACJM, Sagwara in Cr. Misc. Case No. 404/08 against the petitioner for the offence under Sec. 138 of the Negotiable Instruments Act, are hereby quashed by virtue of the compromise arrived-at between the parties. The Stay petition is also disposed-of.