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(2017) 10 DEL CK 0522

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 4099 Of 2017

Rekha Sati — APPELLANT

Vs

State & Another (Govt. Of Nct, Delhi) — RESPONDENT

Date of Decision : 03-10-2017

Acts Referred:
Code Of Criminal Procedure, 1973 — Section 482
Negotiable Instruments Act, 1881 — Section 138, 147

Citation : (2017) 10 DEL CK 0522

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Raaj Malhotra, Harendra Kumar Jaggi

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

CRL.M.A. 16463/2017

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CRL.M.C. 4099/2017 & CRL.M.A. 16462/2017 (STAY)

This matter has been listed upon mentioning.

This is a petition under Section 482 of the Code of Criminal Procedure, 1973 by which the petitioner seeks quashing of the order dated 21.8.2015

passed in CC No.659/2013 registered under Section 138 of the Negotiable Instruments Act, Police Station Pandav Nagar; and the orders dated

1.6.2017 and 27.9.2017.

Notice. Mr.Harendra Kumar Jaggi, attorney and husband of respondent no.2 (complainant), is present in Court and accepts notice. In support of his

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identity, he has produced his original Aadhar Card, photocopy of which has been placed on record. At the outset, attorney of respondent no.2 submits

that respondent no.2 has entered into an amicable settlement with the petitioner and respondent no.2 has no objection if the aforesaid orders are

quashed and the petitioner is released forthwith. The attorney has also identified his signatures on the affidavit, which has been filed along with this

petition.

In this case, a complaint was also filed by respondent no.2 (complainant) under Section 138 of the Negotiable Instruments Act on 19.6.2013. By a

judgment rendered by the Metropolitan Magistrate on 18.8.2015, the petitioner was convicted and sentenced to Simple Imprisonment for a period of

eight months. The petitioner was also directed to pay a sum of Rs.27,10,000/- as compensation, out of which Rs.10,000/- was to be paid as a fine. The

aforesaid judgment was assailed by the petitioner before the Additional Sessions Judge. The parties thereafter entered into an amicable settlement on

28.10.2015. The appeal was adjourned sine die. On an application filed by respondent no.2, the order dated 28.10.2015 was modified on 1.6.2017 to

the extent that respondent no.2 was allowed to move an application before the Metropolitan Magistrate for making the order on sentence operative.

By an order dated 27.9.2017, the trial court observed that there was no provision to keep the proceedings in abeyance, although the parties submitted

that they had again entered into a settlement and respondent no.2 had no objections if the order is kept in abeyance. It is pointed out that the petitioner,

who is a lady and mother of two minor children was taken into custody on 27.9.2017 despite the entire payments having been made.

Learned counsel for the petitioner submits that the learned trial court has failed to take into consideration that the parties had entered into an amicable

settlement and the fact that the trial court was well within its jurisdiction to compound the offence in terms of Section 147 of the Negotiable

Instruments Act. It is further contended that the compounding of the offence can take place at any point of time. Counsel for the petitioner in support

of his submission, has placed reliance on a decision rendered in the case of Gurcharan Singh v. State of Punjab And Ors., CRM M 11343/2016, dated

18.3.2017, more particularly para 3, which reads as under:

â??[3] Learned counsel for the petitioner by relying upon 1 of 8 Cochin Hotels

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Co. (P) Ltd. and others Vs. Kairali Granites and others,

2006 (2) RCR (Criminal) 333 and K. Subramanian Vs. R. Rajathi represented by POAP Kaliappan, 2010 (1) RCR (Criminal) 184 contended

that even after finalisation of judgment of conviction and order of sentence, petitioner can resort to compounding mechanism in terms of

Section 147 of Negotiable Instruments Act as the offence related to dishonouring of cheque is having compensatory profile and it should be

given precedence to cumulative mechanism. Offence is almost a civil wrong which has been clothed in a criminal overtone, therefore, the

priority should be given to compensatory mechanism.â??

Reliance hasÂ alsoÂ been placedÂ by theÂ counsel for the petitioner on a decision rendered in the case of Raj Kumar Rajpur v. The State of

Madhya Pradesh, Cr. Revision No. 685/2010, decided on 18.5.2010.

I have heard learned counsel for the petitioner and attorney of respondent no.2, who is present in person. Taking into consideration the submissions

made, the statement made by the attorney of respondent no.2, the affidavit filed by respondent no.2 on behalf of respondent no.2 and having regard to

the settled position of law, the orders dated 21.8.2015, 1.6.2017 and 27.9.2017 are quashed.

The offence is compounded. The petitioner shall be released forthwith, if not wanted in any other case.

Petition and application stand disposed of in view of above.

Let a copy of this order be sent to the Superintendent, Central Jail, Tihar, forthwith. Let a copy of this order be given DASTI under the signature of

Private Secretary.

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