

(2014) 01 DEL CK 0020

In the Delhi High Court

Case No : Criminal Appeal No. 1136 of 2010

V.S. Yadav

APPELLANT

Vs

Reena

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1973 (CrPC) — Section 320
Negotiable Instruments Act, 1881 (NI) — Section 138 147

Citation : (2014) ALLMR(Cri) 353 : (2014) 3 RCR(Criminal) 157

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Puneet Mittal, for the Appellant; Avninder Singh and Mr. Aditya V. Singh, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—The appellant before this Court filed a complaint u/s 138 of the Negotiable Instruments Act (for short N.I. Act) against the respondent on the allegations that she and her husband had taken a friendly loan of Rs. 2,25,000/- from him and the respondent had issued three cheques for a total sum of Rs. 2,25,000/- towards re-payment of the aforesaid friendly loan which, when presented to the bank were dishonoured for want of funds and the respondent failed to make payment even after service of legal notice upon her. Vide impugned judgment dated 27.1.2010, the learned Metropolitan Magistrate acquitted the respondent. Being aggrieved, the complainant has filed this appeal. Vide order dated 21.9.2010, my learned predecessor held that the respondent had committed offence punishable u/s 138 of the N.I. Act and, therefore, set aside the impugned judgment. The matter was listed for hearing the respondent on the quantum of sentence on 22.9.2010. Thereafter, the parties to the appeal compromised the matter and in view of the said compromise, hearing on the quantum of sentence was deferred. The issue which then arose was whether after conviction by this Court vide order dated 21.9.2010, the respondent could

compound the offence and whether pursuant to such compounding, she can be acquitted of the charge against her.

2. Vide order dated 18.4.2013, Shri Avninder Singh, Advocate was appointed as Amicus Curiae to assist the Court in this matter. The written synopsis were then filed on behalf of both the parties.

3. Section 147 of the N.I. Act reads as under:-

Offences to be compoundable.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

It would, thus, be seen that in view of the non obstante clause contained in the Section, the restrictions and limitations prescribed under the Code of Criminal Procedure with respect to compounding of offences would not be applicable as far as compounding of an offence punishable under the provisions of the aforesaid Act is concerned. Consequently, such an offence can be compounded at any stage before the sentence, if any awarded to an accused under the provisions of the aforesaid Act is fully executed. Hence, there is no legal bar to the compounding of such an offence, either during or even after disposal of an appeal filed either by the accused or by the complainant.

4. Since Section 147 of the N.I. Act does not require permission of the Court for compounding such an offence, no such permission is necessary and the parties therefore can enter into a compromise outside the Court and then get the same recorded in the Court at any point of time before the sentence is fully executed.

5. In Damodar S. Prabhu Vs. Sayed Babalal H., the parties before the Apex Court arrived at a settlement during the pendency of the appeal before the said Court and sought compounding of the offence as contemplated u/s 147 of the N.I. Act. Pursuant to the said settlement, the appellant/accused also sought setting aside of his conviction on the basis of the settlement. The Apex Court thereupon allowed the compounding of the offence and set aside the conviction of the appellant before the said Court. During the course of the judgment, the Apex Court noted that Section 147 of the N.I. Act does not prescribe as to what stage is appropriate for compounding the offence and whether the same can be done at the instance of the complainant or the leave of the Court. It was further clarified that in view of the non obstante clause contained in Section 147 of the N.I. Act, the compounding of the offences punishable under the said Act is controlled only by the said Section and the scheme contemplated by Section 320 of the Code of Criminal Procedure will not be applicable. The Apex Court noted the view taken by it in its earlier decision in K.M. Ibrahim Vs. K.P. Mohammed and Another, holding therein that Section 147 of the N.I. Act will have an overriding effect over the provisions of the Code relating to compounding of offences and the aforesaid Section did not bar the parties from compounding an offence even at the appellate stage or even at the stage of proceedings under Article 136 of the Constitution.

6. However, noticing the contention of the learned Attorney General that the parties are choosing to compound such offences only as a method of last resort, instead of opting for the same as soon as cognizance is taken and the cases under the Act were resulting in a very heavy burden on the Justice Delivery System, the Apex Court framed certain guidelines with respect to compounding of such offences. The aforesaid guidelines read as under:-

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(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.

It was also clarified that any cost imposed in accordance with such guidelines should be deposited with Legal Services Authority operating at the level of the Court before which the compounding takes place. For instance, in case of compounding during the pendency of the proceedings before the High Court, the cost should be deposited with the State Legal Services Authority.

In view of the aforesaid decision of the Apex Court, considering the settlement between the parties, the respondent before this court is acquitted of the charge u/s 138 of the N.I. Act, subject to her depositing 15% of the cheque amount by way of costs with Delhi Legal Services Authority within one month from today.

The appeal stands disposed of accordingly.