

# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Revisional Jurisdiction)

Dated : 4<sup>th</sup> May, 2023

---

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

---

Crl.Rev.P. No.02 of 2019

**Petitioners** : Alpesh Narendra Shah and Another

**versus**

**Respondent** : Manoj Agarwal

Application under Sections 397 and 401 read with Section 482 of the Code of Criminal Procedure, 1973.

---

**Appearance**

Mr. S. S. Hamal, Senior Advocate with Mr. Tashi Wongdi Bhutia, Mr. Mahesh Subba and Pradeep Sharma, Advocates for the Petitioners.  
Mr. Rahul Rathi, Advocate for the Respondent.

---

## J U D G M E N T ( O R A L )

Meenakshi Madan Rai, J.

**1.** I.A. No. 08 of 2023 is a joint application filed by the Petitioners and Respondent herein under Section 147 of the Negotiable Instruments Act, 1881 (for short, the "NI Act"), seeking permission to compound the offence.

**(i)** The parties duly represented by their respective Learned Counsel submit that the matter was compromised between the parties on 31-03-2023, towards which Deed of Compromise has been submitted before this Court.

**2.** Learned Senior Counsel for the Petitioners submits that under Section 147 of the NI Act all offences therein are compoundable. That, the compounding of the offences, can be at any stage of the proceedings. To buttress his submissions, he has placed reliance on **M. Rangaswamaiah vs. R. Shettappa**<sup>1</sup>. Accordingly, the Compromise Deed, dated 31-03-2023, be accepted and the

---

<sup>1</sup> 2002 CRI. L. J. 4792

Petitioners be acquitted of the offence under Section 138 of the NI Act that they have been convicted under.

**3.** Learned Counsel for the Respondent, in agreement with Learned Senior Counsel for the Petitioners, advanced the submission that the Supreme Court in **Damodar S. Prabhu vs. Sayed Babalal H.**<sup>2</sup> has propounded *inter alia* that an application for compounding of offences may be allowed even by the Sessions Court or the High Court, at any stage. That, the said ratio therefore permits the parties to compound the offence.

**4.** The genesis of the dispute is the Complaint filed by the Respondent/Complainant, under Section 138 read with Section 142 of the NI Act on 08-02-2016, before the Court of the Learned Chief Judicial Magistrate, East Sikkim, at Gangtok, being Private Complaint Case No.05 of 2016. According to the Respondent, he had loaned an amount of ₹ 80,00,000/- (Rupees eighty lakhs) only, to the Petitioners/Accused persons No.1 and 2. A sum of ₹ 20,00,000/- (Rupees twenty lakhs) only, was sought to be repaid, vide a cheque dated 19-10-2015, drawn on the Jankalyan Sahakari Bank Ltd., Sahar Branch Andheri (E) Mumbai. The cheque was dishonoured on 01-12-2015 on grounds of insufficient funds. The Petitioners thereafter failed to abide by the statutory provisions of the NI Act, pursuant to which the Respondent filed the Complaint mentioned hereinabove. The Learned Magisterial Court convicted the Petitioners under Section 138 of the NI Act and sentenced them to imprisonment of three months each and to pay a fine of ₹ 20,00,000/- (Rupees twenty lakhs) only, each. It was also ordered that out of the fine so paid, ₹ 20,00,000/- (Rupees twenty lakhs) only, each, i.e., ₹ 40,00,000/- (Rupees forty lakhs) only, would be

---

<sup>2</sup> (2010) 5 SCC 663

paid as compensation under Section 357 of the Code of Criminal Procedure, 1973 (for short, the "Cr.P.C.) to the Respondent. Default clause of imprisonment was also imposed.

**(i)** Aggrieved, by the Judgment and Order on Sentence, dated 29-03-2019, an Appeal was preferred before the Court of Learned Sessions Judge, East Sikkim, at Gangtok, on 23-04-2019, being Criminal Appeal No.04 of 2019. The Learned Appellate Court *inter alia* held that there was no need to interfere with the Judgment of the Learned Trial Court and dismissed the Appeal. Hence, the instant Revision Petition.

**5.** Having heard Learned Counsel for the parties, relevant reference is made to **Damodar S. Prabhu** (*supra*), wherein the Supreme Court held as follows;

**"12. Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an 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 sub-section (9) of Section 320 CrPC which states that "No offence shall be compounded except as provided by this section". A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) CrPC, especially keeping in mind that Section 147 carries a non obstante clause.**

**13.** In *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.* [(2008) 2 SCC 305 : (2008) 1 SCC (Cri) 351] this Court had examined "whether an offence punishable under Section 138 of the Act which is a special law can be compounded". After taking note of a divergence of views in past decisions, this Court took the following position (C.K. Thakker, J. at SCC p. 310, para 17):

"17. ... This provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realised this aspect and inserted Section 147

by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (55 of 2002).”

.....

**15.** 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 this Court, reported as *K.M. Ibrahim v. K.P. Mohammed* [(2010) 1 SCC 798 : (2010) 1 SCC (Cri) 921 : (2009) 14 Scale 262] wherein Kabir, J. has noted (at SCC p. 802, paras 13-14):

“13. As far as the non obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. ...

14. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the appellate forum. **However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings.** Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.”

.....” (emphasis supplied)

**6.** In light of what has been propounded *supra*, it is evident that the offence under Section 138 of the NI Act can be compounded at any stage and overrides the effect of Section 320(9) of the Cr.P.C. (which otherwise provides that no offence shall be compounded except as provided by the Section), in view of the fact that Section 147 of the NI Act was inserted by way of an amendment to a special law and the Section commences with a *non obstante* clause. Consequently, in light of the compromise Petition filed before this Court, enumerating the terms of consent and the submissions of the Learned Counsel for the parties that the settlement was arrived at between the parties without duress on either party from any quarter, the compromise Petition is accepted and taken on record. The compounding of the offence is allowed. The order of conviction (*supra*) handed out to the Petitioners is set

aside. The Petitioners are consequently acquitted of the offence under Section 138 of the NI Act.

**7.** The records reveal that I.A. No.01 of 2019 had been filed by the Petitioners/Accused persons seeking suspension of the impugned Order, dated 28-09-2019, in Criminal Revision Case No. 01 of 2019, passed by the Learned Sessions Judge, Special Division – I, at Gangtok. The impugned Order of stay was subject to deposit of ₹ 5,00,000/- (Rupees five lakhs) only, by the Petitioners before the Learned Trial Court. Learned Senior Counsel for the Petitioners submits that in terms of the Order of this Court, dated 24-10-2019, an amount of ₹ 5,00,000/- (Rupees five lakhs) only, had been deposited before the Learned Trial Court. That, in view of the compromise arrived at by the parties, and as agreed to by the parties before this Court today, the Petitioners be permitted to withdraw the deposited amount of ₹ 5,00,000/- (Rupees five lakhs) only.

**8.** In view of the foregoing discussions, the prayer of Learned Senior Counsel for the Petitioners is allowed. He is permitted to withdraw the amount of ₹ 5,00,000/- (Rupees five lakhs) only, deposited.

**9.** I.A. No.01 of 2019 and I.A. No.08 of 2023 disposed of accordingly.

**10.** Criminal Revision Petition also stands disposed of.

**( Meenakshi Madan Rai )**

**Judge**  
04-05-2023

Approved for reporting : **Yes**