

HIGH COURT OF ORISSA : CUTTACK

CRLREV NO. 1420 OF 2010

From an order dated 9.11.2010 passed by Sri P.K.Mohapatra, learned Addl. Sessions Judge, Rourkela in CrI. Appeal No. 64 of 2010 confirming the judgment dated 27.8.2010 passed by Sri R.Sutar, learned SDJM, Panposh in 1.C.C. No. 39 of 2009/Tr. No.476 of 2009.

Hari Prasad Balodia Petitioner

-Versus-

Vikash Gupta & another Opp. Parties

For Petitioner : M/s.S.R.Mohapatra,
B,R.Mohanty,B.K.Raj&
S.Harichandan.

For Opp. Party No.1 : Mr.Ranjit Mohanty

P R E S E N T :

THE HON'BLE MR. JUSTICE INDRAJIT MAHANTY.

Date of hearing & judgment: 27.01.2011

I. Mahanty, J. This criminal revision is directed against order dated 9.11.2010 passed by the learned Additional Sessions Judge, Rourkela in Criminal Appeal No. 64 of 2010 confirming the judgment dated 27.8.2010 passed by the learned SDJM, Panposh in 1. C.C. No. 39 of 2009, by which the petitioner was convicted under Section 138 of the N.I. Act, 1981 and sentenced to S.I. for three months and to pay

compensation of Rs.50,000/-(rupees fifty thousand) to the opposite party no.1(complainant) within one month from the date of pronouncement of the judgment, other wise same shall be recovered as per the provision of law.

2. An affidavits has been filed by the complainant-Vikash Gupta(O.P.1), wherein it is stated that the dispute inter se the parties has been resolved and the petitioner has paid a sum of Rs.35,000/- to the complainant(O.P.1). The opposite party-complainant in his affidavit has accepted the aforesaid fact and has noted the fact that he does not want to proceed with the matter any further.

3. In this regard, reference is made to a judgment of the Hon'ble Supreme Court in the case of **K.M. Ibrahim vs. K.P. Mohammed and Another**, (2010) 1 Supreme Court Cases 798, wherein a Division Bench of the Hon'ble Supreme Court headed by Hon'ble Justice Altamas Kabir came to hold that, an application for compounding 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.

4. The Hon'ble Supreme Court took into account the scope and ambit of Section 147 of the N.I. Act and held that once a matter has been compromised between the parties and payment has been made in full and final settlement of their dues, the appeal deserved to be allowed and the appellant is entitled to an acquittal and as a consequence thereof, the order of conviction and sentences recorded by all the courts can be permitted to be set aside and the appellant ought to be acquitted of the charges

leveled against him. It is further held in paragraph-14 of the aforesaid judgment that Section 147 of the N.I. Act does not bar the parties from compounding an offence under Section 138 of N.I. Act even at the appellate stage of proceeding. For better appreciation, Section 147 of the N.I. Act is quoted herein below:

“147. 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.

5. In the facts of the present case, it appears that the accused-petitioner had issued a cheque value of Rs.35,000/- which was the subject matter of dispute in the present proceeding. While the petitioner was convicted by the learned SDJM, Panposh in I.C.C. Case No.39 of 2009, the accused-petitioner also filed an appeal being CrI. Appeal No.64 of 2010 in the court of the learned Addl. Sessions Judge, Rourkela, which has been dismissed by judgment dated 9.11.2010. In the present revision the opposite party-1(complainant) has filed an affidavit indicating his satisfaction in settlement of the disputes and receipt of the defaulted amount. In the said affidavit he has also supported the prayer of the accused-petitioner for allowing the revision and setting aside the order of conviction passed against him.

6. On consideration of the facts as noted hereinabove, and the power of this Court to compound the offences arising out of the N.I. Act by virtue of Section 147 thereof, I am of the considered view that this is a fit case where the prayer of the

parties to this litigation to compound the offence as provided under Section 147 of the N.I. Act ought to be allowed and that the conviction of the petitioner under Section 138 of the N.I. Act ought to be set aside.

7. Accordingly, the revision is allowed and consequently the order of conviction dated 27.8.2010 passed in I.C.C. Case No.39 of 2009 and dismissal of Crl. Appeal No.64 of 2010 vide judgment dated 9.11.2010 are set aside and the conviction of the petitioner under Section 138 of the said Act is also set aside.

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I.Mahanty, J.