IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 122 of 2018

Date of decision: 31.12.2018.

Prem Singh .....Petitioner.

Versus

Dharam Singh .....Respondent.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?[1] No.

For the Petitioner : Mr. D. S. Kainthla, Advocate.

For the Respondent : Mr. Maan Singh, Advocate..

Tarlok Singh Chauhan, Judge (Oral).

Looking to the nature of order, I propose to pass, it is not at all necessary to delve into the facts in detail. Suffice it to state that the complainant/respondent instituted a complaint under Section 138 of the Negotiable Instruments Act (for short 'Act') against the petitioner on the allegations that a cheque of Rs. 2,20,000/- handed over by the petitioner to respondent in order to discharge his liability had been dishonoured. The complaint was decided in favour of the respondent by the learned trial Magistrate and the petitioner was sentenced to undergo simple imprisonment for eight months and also awarded

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

a lumpsum compensation of Rs. 2,70,000/- to the complainant/respondent.

2. Aggrieved by the judgment of conviction and sentence passed by the learned trial Magistrate on 08.08.2016, though the petitioner preferred an appeal before the learned Sessions Judge, Kullu, however, the same came to be dismissed vide judgment dated 23.01.2018, constraining the petitioner to file the instant revision petition.

3. Today, when the case was taken up, learned counsel for the petitioner has paid a sum of Rs. 1,10,000/- to the learned counsel for the respondent in the open Court and requested that the case be compounded.

4. However, the moot question is whether a compromise, at this stage, can be permitted to be effected between the parties where the petitioner has been charged under Section 138 of the Act. This court is not powerless in such situation and adequate powers have been conferred upon it not only under sections 397 read with Section 401 or Section 482 Cr.P.C. (hereinafter referred to as the Code) but also under Section 147 of the Act for accepting the settlement entered into between the parties and to quash the proceedings arising out of the proceedings, which have consequently culminated into a settlement. This power has been conferred to subserve the ends

of justice or/and to prevent abuse of the process of any Court. Though, such power is required to be exercised with circumspection and in cases which do not involve heinous and serious offence of mental depravity or offences like murder, rape, dacoity etc.

5. This question otherwise need not detain this Court any longer in view of the three Judges Bench decision of the Hon'ble Supreme Court in ***Parbatbhai Aahir @ Parbatbhai and others versus State of Gujarat and another, Criminal Appeal No. 1723 of 2017***, decided on 4th October, 2017, wherein after taking into consideration the entire law on the subject, the Hon'ble Supreme Court has laid down the following broad principles for exercise of powers under Section 482 of the Code which read thus:-

> "*(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;*
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> *(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power*

to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

6. Apart from the above, it shall be apposite to make note of another recent judgment of the Hon'ble Supreme Court in ***Meters and Instruments Private Limited and another*** *versus* ***Kanchan Mehta (2018) 1 SCC 560*** wherein after taking into consideration the object of introducing Section 138 and other provisions of Chapter XVII in the Act in the year 1988, it was observed as under:-

"18. From the above discussion following aspects emerge:

18.1. Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under

Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

18.3. Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

18.4. Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

> *18.5. Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances."*

7. The issue is further no longer *res integra* in view of the very recent judgment of the Hon'ble Supreme Court in ***Bhangu Trading Co. and another*** *versus* ***Surjit Singh (dead) through LRs, Criminal Appeal Nos. 808 and 809 of 2018 decided on 02.07.2018*** and in terms of the subsequent judgment in ***N.P. Murugesan*** *versus* ***C. Krishnamurthy, Criminal Appeal No.818 of 2018, decided on 04.07.2018,*** wherein it was observed as under:-

> *"Leave granted.*
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> *2. The appellant is before this Court aggrieved by the conviction and sentence under Section 138 of the Negotiable Instruments Act, 1881.*
>
> *3. Today, when the matter came up before this Court, we are informed that the cheque amount has already been paid and it is acknowledged by the respondent.*

> *4. In the peculiar facts and circumstances of this case, we are of the view that for doing complete justice the whole litigation should be given a quietus, subject to appropriate terms.*
>
> *5. Accordingly, we set aside the conviction and sentence imposed on the appellant and allow the appeal…."*

8. Since, the petitioner has paid the entire compensation amount, therefore, quashing of the complaint initiated at the instance of complainant/respondent would be a step towards securing the ends of justice and to prevent abuse of process of the Court, especially, when the petitioner is facing pangs and suffered agony of protracted trial and thereafter appeal/revision for the last more than four years and has paid the entire compensation amount.

9. Thus, taking holistic view of the matter and further taking into consideration all the attending facts and circumstances as also the law laid down by the Hon'ble Supreme Court in ***Parbatbhai Aahir, Kanchan Mehta, Bhangu Trading Co., and N.P. Murugesan*** **cases** (supra), I find this to be a fit case to exercise the powers not only under Sections 397, 401 and Section 482 of the Code, but even under Section 147 of the Act.

10. In view of the above discussion, it is ordered that the impugned substantive sentence of simple imprisonment imposed in this case shall stand modified and substituted in lieu of the

compensation amount of Rs. 2,70,000/- that stands already deposited/paid by the petitioner. The amount deposited before the Registry of this Court be released in favour of the respondent/complainant by remitting the same to his bank account.

12. With these observations, the revision petition stands disposed of, so also the pending application, if any.

31st December, 2018. **(Tarlok Singh Chauhan),**
(sanjeev) **Judge.**