

Neutral Citation No. - 2023:AHC:114218

A.F.R.

Reserved on 12.5.2023

Delivered on 24.5.2023

Court No. - 93

Case :- CRIMINAL REVISION No. - 2047 of 2023

Revisionist :- Smt. Rani Gaur

Opposite Party :- State Of U.P. And 4 Others

Counsel for Revisionist :- Abhitab Kumar Tiwari

Counsel for Opposite Party :- G.A.,Archana Tyagi,Pankaj Kumar Tyagi

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Abhitab Kumar Tiwari, learned counsel for the revisionist, Sri O.P. Mishra, learned AGA for the State and Smt. Archana Tyagi, learned counsel for respondents.

2. By means of this criminal revision, the revisionist has challenged an order dated 23.03.2023 passed by Session Judge, Meerut in criminal revision no. 206 of 2023 (Vishwakarma Builders and Others vs. State of U.P. and Another) whereby the learned revisional court set aside the order dated 24.02.2023 passed by Additional Special Court no. 2, Meerut in criminal complaint case no. 1575 of 2009 (Rani Gaur vs. Vishwakarma Builders and Others) under Section 138 of the Negotiable Instrument Act, Police Station Partapur, District Meerut.

3. Relevant facts are as below:-

*The instant revisionist filed a complaint on 11.08.2009 under Section 138 of the Negotiable Instrument Act, which is pending before the trial court; during the course of proceedings the accused filed a demand draft of Rs. 11 lakhs and made a prayer before the trial court to direct the revisionist/complainant to compound the case; the revisionist objected to compounding saying that she is not ready to settle the matter for Rs. 11 lakhs after lapse of 13 years; the learned Magistrate rejected the application of the accused on the ground that the complainant cannot be compelled to compound the matter; the accused challenged the aforesaid order by filing a revision; the revision came to be decided by the learned revisional court whereby the impugned order was set aside and the trial court was directed to pass an appropriate order as per the law laid down by the Apex Court in **M/s Meters and Instruments Private Limited and Another vs. Kanchan Mehta: AIR 2017 Supreme Court 4594.***

4. It is contended on behalf of the revisionist that the finding recorded by the revisional court is illegal and arbitrary and against the provisions of law; the accused, after lapse of about 14 years wants to get the matter compounded by giving the amount of the cheque with additional about 10% only; she has been suffering since 2019 and has been in dire need of money for domestic purposes; the accused is not entitled to any benefit in the light

of the judgment of the Apex Court in *Damodar S Prabhu vs. Sayed Babalal: (2010) 5 SCC 663* and in the light of the judgment of *M/s Meters and Instruments Private Limited and Another vs. Kanchan Mehta (supra)*. Citing certain circumstances relating to the present controversy, story, the background facts and civil suit between the two, it is argued on behalf of the revisionist that apprehending his imminent failure in both the cases, he sought to save himself by giving Rs. 11 lakhs for the cheque amount of Rs. 10 lakhs, after 13 years of suffering.

5. I went through the judgment of the Supreme Court in *M/s Meters and Instruments Private Limited and Another vs. Kanchan Mehta (supra)*. The Supreme Court highlighted the fact that the matters under Section 138 of the Negotiable Instruments Act are essentially civil wrongs and the case has to be normally tried in a summary manner as prescribed in Cr.P.C. The Apex Court observed in Para-18 of the judgment as below:-

“i) 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.

ii) 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.

iii) 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.”

6. On the other hand, the respondent has drawn my attention to a judgment of Punjab and Haryana High Court in *Nidhi Knitwears Pvt. Ltd. And Another vs. Honey Hosiery Mills: 2022 0 Supreme (P & H) 549*. The Punjab and Haryana High Court has referred to the judgment of Supreme Court in *M/s Meters and Instruments Private Limited and Another vs. Kanchan Mehta (supra)*, wherein it is observed as below:-

“12. This Court in M/s Anant Tools's case (supra), has comprehensively dealt with the judgments in JIK Industries' case (supra) and M/s Meters and Instruments' case (supra). In Para 12 of the judgment (reproduced hereinabove), a co-ordinate Bench of this Court came to the conclusion that if a subsequent Bench of the Hon'ble Supreme Court differs with the view taken by an earlier Bench of equal strength, then the only course open for the subsequent Bench is to refer the matter to a larger Bench. In case, the above option has not been exercised by the subsequent Bench, then it is the view taken by an earlier Bench of the equal strength, which is to prevail. In Hem Lata's case (supra), the decision in JIK Industries Limited and others (supra) is referred but there is no discussion as to why the Court has chosen to follow the law laid down in M/s Meters and Instruments (supra) and not JIK Industries Limited and others (supra). In the cases of Suba Singh (supra) and Vikas Jishtu (supra), the reliance has been placed on M/s Meters and Instruments (supra) alone and JIK Industries Limited and others (supra) has not been referred to at all.

13. In the case of "M/s Indo Swiss Time Limited versus Umrao and others, 1981 AIR (Punjab and Haryana) 213", this Court has held that when

*judgments of the superior Court of co-equal Benches and therefore, of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is, thus, clear that when two directly conflicting judgments of the superior Court and of equal authority are extent then both of them cannot be binding on the Courts below. In such a situation, it is the plain duty of the High Court in the interest of justice to respectfully follow that which appears to it to state the law accurately or, in any case, more accurately than the other conflicting judgments. Applying the said principle to the present case, apparently, the judgment in *Anant Tools (Unit II) Pvt. Ltd. and others (supra)* lays down the law more accurately than the judgments in the cases of *Hem Lata (supra)*, *Suba Singh (supra)* and *Vikas Jishtu (supra)*.”*

7. It may be noted that the Punjab and Haryana High Court followed the observation as given in *Anant Tools (Unit No.II) Pvt. Ltd. And others versus M/s Anant Tools Pvt. Ltd., Jalandhar, 2019(1) RCR (Criminal) 137*, in which the court referred to the judgment of Supreme Court in case of *JIK Industries Limited and others versus Amarlal vs. Jumnai and another, 2012(1) RCR (Criminal) 822*, which mandated that the consent of the complainant for compounding the offence under Section 138 of the Negotiable Instruments Act is must.

8. I studied both the judgments. The Supreme Court did not say that the requirement of consent for compounding may just be done away with. Instead widening the compensatory aspect of cases filed under Section 138 of the Negotiable Instrument Act, the Apex Court has carved out a window in the existing scheme of things saying that the case can be disposed of without obtaining direct consent of the complainant under certain circumstances. The circumstances included offering an amount fair and acceptable which in the opinion of the court is appropriate for duly compensating the complainant. That is under certain circumstances the court can proceed in absence of direct consent. The court is empowered to apply its discretion in terms of provisions of Section 258 Cr.P.C. It may be made clear that this aspect of the matter is distinct and separate from compounding of the case where both the parties agree. The revisional court has remanded the matter to decide it afresh as per law laid down in *M/s Meters and Instruments Private Limited and Another vs. Kanchan Mehta (supra)*. By the aforesaid judgment the Apex Court has emphasized that where an appropriate amount has been offered/deposited, the trial court may consider to drop the proceeding. Definitely the objections, if any, in this regard shall be taken into consideration The court has not lost its power of discretion in such matters. In view of the above I do not find any cause for interference.

9. Accordingly, this criminal revision is **dismissed**.

Order Date :- 24.5.2023

#Vikram/-