A.F.R.
Neutral Citation No. - 2024:AHC-LKO:40076
Reserved on 01.05.2024
Delivered on 27.05.2024

Court No. - 27

Case :- APPLICATION U/S 482 No. - 2491 of 2024

Applicant :- Ravindra Kumar Yadav
Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home, Civil Sectt. Lko. And Another
Counsel for Applicant :- Veer Bahadur Lal Srivasta,Alok Kumar Mishra,Chandan Srivastava
Counsel for Opposite Party :- G.A.,Dharmendra Gupta

Hon'ble Shamim Ahmed,J.

1. Heard Sri Veer Bahadur Lal Srivastava, learned counsel for the applicant, Sri Ashok Srivastava, learned A.G.A. for the State opposite party no.1 and Sri Dharmendra Gupta, learned counsel for the opposite party no.2

2. The instant application under section 482 Cr. P.C. has been filed with the prayer to compound the offence committed by the applicant under Section 138 of the Negotiable Instrument Act, 1881 in Complaint Case No.7097 of 2017, Police Station Talkatora, District Lucknow (Sanchetna Financial Services Private Limited Vs. Ravindra Kumar Yadav) and further to quash the impugned judgment and order dated 07.04.2021 passed by learned Court of Additional Court No.3 (N.I. Act), Lucknow, whereby the applicant has been convicted under Section 138 of the Negotiable Instrument Act, 1881 and has been directed to undergo imprisonment for two years alongwith fine of Rs.45,00,000/- and in case of default of payment of fine, the applicant has been directed to undergo additional simple imprisonment for a period of one and half year. A sum of Rs.38,00,000/- was directed to be paid to the complainant as damages.

3. The facts of the case, in brief, are that the applicant had taken a sum of Rs.30,00,000/- as loan from the opposite party no.2 and became defaulter in paying the installment.

4. Thereafter, the applicant agreed to pay the entire dues to the opposite party no.2 and had issued cheque bearing No.000034 dated 05.09.2017 of Kotak Mahindra Bank, Vishal Khand, Gomti Nagar, Lucknow for

Rs.27,60,000/-, however, when the same was presented by the opposite party no.2, it got dishonored with the reason “Funds Insufficient”.

5. Thereafter, the opposite party no.2 filed a Complaint Case No.7097 of 2017, under Section 138 of the Negotiable Instrument Act, 1881, Police Station Talkatora, District Lucknow. After the completion of trial, the trial court has convicted the applicant vide judgment and order dated 07.04.2021 and sentenced him for a period of two years alongwith fine of Rs.45,00,000/- and in case of default of payment of fine, the applicant has been directed to undergo additional simple imprisonment for a period of one and half year. A sum of Rs.38,00,000/- was directed to be paid to the complainant as damages.

6. Thereafter, the applicant has preferred a Criminal Appeal No.165 of 2021 against the impugned judgment and order dated 07.04.2021 passed by the learned Additional Court No.3 (N.I. Act), Lucknow, however, the same was dismissed by means of judgment and order dated 16.01.2024 passed by the learned Additional Sessions Judge, Court No.3, Lucknow and the applicant was directed to surrender before the learned trial court on 07.02.2024 to undergo sentence.

7. The applicant had already deposited Rs.9,00,000/- before the learned Additional Court No.3 (N.I. Act), Lucknow in compliance of the order passed by learned Sessions Judge, Lucknow during the hearing of Criminal Appeal No.165 of 2021.

8. Thereafter, the applicant had preferred a Criminal Revision before this Court bearing Criminal Revision No.104 of 2024, which too got dismissed at the admission stage vide order dated 08.02.2024.

9. Learned counsel for the applicant submits that the applicant has surrendered himself before the learned trial court on 07.02.2024 in compliance of the judgment and order dated 16.01.2024 passed by the court of learned Additional Sessions Judge, Court No.3, Lucknow in Criminal Appeal No.165 of 2021 and now he is languishing in jail in connection with the aforesaid case.

10. Learned counsel for the applicant further submits that after the rejection of Criminal Revision No.104 of 2024, both the parties have entered into compromise and a written compromise agreement dated 07.03.2024 has been prepared to the effect that the instant matter shall be settled in accordance with the terms and conditions as contained therein.

11. Learned counsel for the applicant further submits that the applicant is ready to make payment of Rs.38,00,000/- in accordance with the terms and conditions as contained in the compromise dated 07.03.2024. He further submits that Rs.20,00,000/- has been received by the opposite party no.2 through Demand Draft No.253932 dated 07.03.2024 of Yes Bank Ltd., Gomti Nagar, Lucknow.

12. With this background, learned counsel for the applicant has submitted that this petition has been filed on 12.03.2024 on the basis of changed circumstances with the prayer to compound the offence. Learned counsel further submits that this Hon'ble Court may invoke its inherent power under Section 482 Cr.P.C. so that ends of justice could be secured as the object of 'N. I. Act' is primarily compensatory and not punitive and moreover Section 147 of 'N.I. Act' would have an overriding effect on section 320 Cr.P.C. irrespective of which stage the parties are compromising with the kind leave of this Hon'ble Court.

13. In support of his arguments, learned counsel for the applicant has submitted that in the case of **Damodar S. Prabhu vs. Sayed Babalal H** reported at **2010 (2) SCC (Cri) 1328**, the Hon'ble Apex Court had formulated the guidelines for compounding the offence under section 138 N.I. Act wherein in para 21, it was pleased to observe as under :

> *"With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:-*
>
> *THE GUIDELINES*
>
> *(i) In the circumstances, it is proposed as follows:*
>
> *(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."

14. Learned counsel for the applicant also submitted that in the case of **M/s Meters and Instruments Private Limited and another vs. Kanchan Mehta** reported at **2017 (7) Supreme 558** Hon'ble the Apex Court in para 18, was pleased to observe as under :

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.

(iv)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.

> *(v) 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.*

15. Learned counsel for the applicant further submitted that the application under section 482 Cr.P.C. is maintainable after the dismissal of the revision on merit. To support of this arguments, he has relied upon the judgment of Gujarat High Court in the case of **Kripal Singh Pratap Singh Ori vs. Salvinder Kaur Hardip Singh** reported at **2004 Crl. L. J. 3786** wherein, the Gujarat High Court was pleased to observe as under:-

> *"16.I have considered the decisions cited by the learned counsel for the respective party and some other decisions of the Apex Court and I do not think it necessary to enlist those decisions which are taken into consideration for the purpose of the present proceedings. But ultimately one balanced principle has emerged that the petitions invoking inherent powers under section 482 Cr.P.C. after dismissal/disposal or revision application under section 397 Cr.P.C. read with section 401 Cr.P.C., are not maintainable by the same party, more so when no special circumstances are made out. The gist of this ratio is reflected in the decision reported in AIR 2001 SC 3524 in the case of Rajinder Prasad vs. Bashir and ors. It was contended before the Apex Court that as the earlier revision petition filed by the accused persons under section 397 of the Code has been rejected by the High Court vide order dated 13.7.1990, they had no right to file the petition under section 482 of the Code with prayer for QUASHING the same order. While dealing with the above contention the Apex Court observed that, "...We do not agree with the arguments of the learned counsel for the respondents that as the earlier application had been dismissed as not pressed, the accused had acquired a right to challenge the order adding the offence under section 395 of the Code ..." (i.e. IPC) It is further observed that, "We are of the opinion that no special circumstances were spelt out in the subsequent application for invoking the jurisdiction of the High Court under Section 482 of the Code and the impugned order is liable to be set aside on this ground alone."*

> *17. So can be legitimately argued and inferred and held that in all cases where the petitioners are able to satisfy this court that there are special*

> *circumstances which can be clearly spelt out , subsequent application invoking INHERENT powers under section 482 Cr.P.C. can be moved and cannot be thrown away on the technical argument as to its sustainability. The apex court in case of Rajendra Prasad (supra) was dealing with a case related to first part of section 482 Cr.P.C. but, when it comes to third part, the approach should remain more pragmatic and indirect relegation to Supreme Court, if legally possible, can be prevented.*
>
> *31. In the circumstances, it is hereby declared that the compromise arrived between the parties to this litigation out of court is accepted as genuine and the order of conviction and sentence passed by the learned JMFC, Vadodara and confirmed in appeal by the learned Sessions Judge, Fast Track Court, Vadodara, therefore, on the given set of facts are hereby quashed and set aside as this court intends, otherwise to secure the ends of justice as provided under section 482 Cr.P.C. Obviously the order disposing Revision Application would not have any enforceable effect.*

16. Learned counsel for the applicant has also relied upon the judgment of Hon'ble the Apex Court in the case of **Vinay Devanna Nayak vs. Ryot Seva Sahkari Bank Limited** reported at **AIR 2008 SC 716** wherein the Hon'ble Apex Court was pleased to observe as under :

> *"18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.*
>
> *19. For the foregoing reasons the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him."*

17. Learned counsel for the applicant has argued that the law regarding compounding of offences under the N.I. Act is very clear and is no more res integra and the offences under the N. I. Act can be compounded even at any stage of the proceedings. He submits that in terms of the aforesaid law laid down by the Hon'ble Supreme Court, the parties may be permitted to compound the offence and the conviction of the petitioner be set aside.

18. Per-contra, learned AGA for the State has vehemently opposed the submissions made by the learned counsel for the applicant and submitted that the instant application under section 482 Cr.P.C. is not maintainable as the

applicant has already been convicted by the learned trial court and the conviction order has been upheld by the appellate court and by this Hon'ble Court in the revision. Learned AGA has submitted that the present application under section 482 Cr.P.C. is not maintainable as the High Court has dismissed the revision application on merits. It is further submitted that in view of the provisions of Sub-section (6) of Section 320 Cr.P.C. and the observations made by the Hon'ble Supreme Court in the case of **Tanveer Aquil vs. State of M.P. and another (19990) Supp SCC 63**, the parties should be relegated to the Hon'ble Apex Court to initiate appropriate proceedings to get the actual affect of compromise arrived at between the parties. In the case of **Tanveer Aquil (supra),** the appellant was convicted under section 324 I.P.C. and was ordered to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-. After the pronouncement of the judgment by the High Court, the learned Counsel appeared and pleaded for an opportunity of hearing and at that stage the High Court again heard the matter and added a postscript in the judgment confirming the conviction and sentence. The petitioner thereafter had moved the High Court for a compromise to compound the offence. It was submitted to the High Court that the accused has paid a sum of Rs.3,500/- to the complainant and the learned Counsel for the complainant confirmed of having received the amount of Rs. 3,500/- in token of the compromise arrived between the parties. In Para 1 of the cited decision the Apex Court has observed that "..... *but the High Court did not and indeed could not take into consideration that application since it has deposed of the matter already."*

19. Learned AGA has also submitted that when this Court has already rejected the revision application on merits, whether the parties or any one of them can be permitted to place compromise and to get an order of acquittal from the very Court, is the question. Therefore, in more than one decisions, the Hon'ble Apex Court has observed that the petition invoking inherent powers under section 482 Cr.P.C. is not maintainable when the earlier revision application filed under Section 397 Cr.P.C. read with Section 401 Cr.P.C. seeking same or similar relief, when dismissed on merit, or has not pressed. However, in the same way the Hon'ble Apex Court has observed in more than one cases that such petitions, though otherwise, are not maintainable, can even be entertained when special circumstances are made out. These observations are in reference to third part of Section 482 of Cr. P.C. Learned AGA has submitted that the present case is nothing but a gross misuse of the process of the law. There is no ground available to the applicant for invoking the inherent power under section 482 Cr.P.C. for compounding the sentence on the basis of the compromise as filed by the applicant. The present application is devoid of any merit hence it is to be dismissed.

20. I have heard the learned counsel for the parties and carefully perused the compromise arrived at between the parties and other materials on record.

21. Considering the facts as narrated above, the following two questions arise for consideration -

> *Whether an order passed by the High Court in the criminal revision petition confirming the conviction can be nullified by the High Court in a petition filed under section 482 Cr.P.C. noticing subsequent compromise of the case by the contesting parties ?*

22. Before answering the aforesaid questions as framed, I shall examine the relevant provisions of the Cr.P.C. as well the Negotiable Instrument Act. I may extract the Section 320 Cr.P.C., Section 147 of the Negotiable Instrument Act and Section 482 Cr.P.C.

Section 320 Cr.P.C. - Compounding of Offences -

> 1) The offences punishable under the sections of the Indian Penal Code (45 of 1860), specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table -
>
> 2) The offences punishable under the Sections of the Indian Penal Code (45 of 1860), specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending be compounded by the persons mentioned in the third column of that Table -
>
> 3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.
>
> 4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.
>
> (b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908

(5 of 1908) of such person may, with the consent of the Court, compound such offence.

5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or as the case may be, before which the appeal is to be heard.

6) A High Court or Court of Session acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this section.

7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

9) No offence shall be compounded except as provided by this section.

Section 147 of the Negotiable Instrument Act :'

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

Section 482 Cr.P.C. :

Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

23. I have to refer the compromise deed which is on the record for proper adjudication :-

सुलहनामा

रवीन्द्र कुमार यादव पुत्र श्री शिव कुमार यादव निवासी–ग्राम धावा मजरे, इमलिया थाना–चिनहट, लखनऊ द्वारा भाई संदीप यादव पुत्र श्री शिव कुमार निवासी–देवा रोड पी0ए0सी0 फार्म खण्डक, लखनऊ।

प्रथम पक्ष

एवम्

संचेतना फाइनेन्शियल प्राइवेट लिमिटेड द्वारा डायरेक्टर विनोद कुमार राय, पता–रजिस्टर्ड आफिस शाप नं0–3 टाईप–एस–02, सी0एस0सी0–5, अवन्तिका रोहिणी, नई दिल्ली व कम्पाउण्ड ऑफिस बी–348/3, राजाजीपुरम थाना–तालकटोरा, जिला लखनउ।

द्वितीय पक्ष

हम दोनों उभय पक्ष निम्नलिखित शर्तों पर पाबन्द होते हैं:–

1. यह कि प्रथम पक्ष ने द्वितीय पक्ष से रू0 30,00,000/– (रूपये तीस लाख मात्र) का लोन प्राप्त किया था, जिसके किस्तों के भुगतान में चूक होने पर प्रथम पक्ष ने बचे हुए लोन धनराशि के पूर्ण भुगतान हेतु एक चेक सं0–000034 दिनांकित 05.09.2017 को धनराशि रू0 27,60,000/– (रूपये सत्ताईस लाख साठ हजार) के भुगतान हेतु द्वितीय पक्ष के पक्ष में जारी किया था।

2. यह कि प्रथम पक्ष द्वारा जारी किये गये उक्त चेक को द्वितीय पक्ष ने भुगतान हेतु बैंक में प्रस्तुत किया जो कि "FUNDS INSUFFICIENT" की टिप्पणी के साथ अनादरित हो कर द्वितीय पक्ष को वापस प्राप्त हो गया।

3. यह कि चेक अनादरित होने के उपरान्त द्वितीय पद्वा ने प्रथम पक्ष के विरूद्ध एक वाद अन्तर्गत धारा–138 एन.आई.एक्ट के तहत माननीय न्यायालय के समक्ष दाखिल किया गया, जिसे न्यायालय श्रीमान अतिरिक्त न्यायालय कक्ष सं0–3, लखनऊ द्वारा दिनांक 07.04.2021 को निर्णीत करते हुए निम्न आदेश पारित किया गया:– ''सिद्ध दोषी रवीन्द्र कुमार यादव को परक्राम्य लिखत अधिनियम–1881 की धारा–138 के अधीन दण्डनीय अपराध कारित करने के लिए दो वर्ष के साधारण कारावास की सजा तथा रू0 45,00,000/–(रूपये पैंतालिस लाख मात्र) अर्थदण्ड की सजा से दण्डित किया जाता है। अर्थदण्ड न अदा करने की दशा में सिद्ध दोषी एक वर्ष छः माह के साधारण कारावास के अतिरिक्त सजा भुगतेगा। अर्थदण्ड की धनराशि में से 38,00,000/– (रूपये अड़तीलस लाख मात्र) परिवादी को प्रतिकर के रूप में भुगतान किये जायेंगे। ''

4. यह कि प्रथम पक्ष ने उपरोक्त निर्णय एवं आदेश दिनांकित 07.04.2021 के विरूद्ध माननीय सत्र न्यायाधीश लखनऊ के समक्ष अपील संख्या–165/2021 प्रस्तुत किया, जो कि न्यायालय श्रीमान् अपर एवं सत्र न्यायाधीश, कक्ष संख्या–3 लखनऊ द्वारा पारित निर्णय एवं आदेश दिनांकित 16.01.2024 के माध्यम से निरस्त कर दी गयी तथा प्रथम पक्ष निर्णय एवं

आदेश दिनांकित 16.01.2024 के अनुपालन में दिनांक 07.02.2024 को आत्म समर्पण कर जिला कारागार लखनऊ में निरूद्ध है।

5. यह कि उपरोक्त अपील में माननीय सत्र न्यायाधीश, लखनऊ द्वारा पारित आदेश के अनुपालन में प्रथम पक्ष द्वारा रू0 9,00,000/– (रूपये नौ लाख मात्र) विचारण न्यायालय में जमा किया जा चुका है।

6. यह कि प्रथम पक्ष ने न्यायालय श्रीमान् अपर सत्र न्यायाधीश, कक्ष सं0–3, लखनऊ द्वारा पारित उपरोक्त निर्णय एवं आदेश दिनांकित 16.01.2024 के विरूद्ध माननीय उच्च न्यायालय के समक्ष एक आपराधिक निगरानी संख्या–04/2024 योजित किया था जो कि आदेश दिनांकित 08.02.2024 के माध्यम से निरस्त कर दिया गया।

7. यह कि प्रथम पक्ष द्वितीय पक्ष को कुल धनराशि रू0 38,00,000/– (रूपये अड़तीस लाख मात्र) भुगतान करने को तैयार है।

8. यह कि प्रथम पक्ष द्वितीय पक्ष को निम्न प्रकार से भुगतान करेगाः–

(i) डिमाण्ड ड्राफ्ट सं0–253931 दिनांकित 06.03.2024 एवं डिमाण्ड ड्राफ्ट संख्या–253932 दिनांकित 07.03.2024, यस बैंक लिमिटेड,गोमती नगर, लखनऊ के माध्यम से रू0 20,00,000/– (रूपये बीस लाख मात्र) इस सुलहनामा के निष्पादन के समय द्वितीय पक्ष को प्रदान कर रहा है।

(ii) बकाया धनराशि रू0 18,00,000/– (अट्ठारह लाख मात्र) में से रू0 9,00,000/– (रूपये नौ लाख) जो कि विचारण न्यायालय में दौरान विचारण अपील प्रथम पक्ष द्वारा जमा किया गया था को द्वितीय पक्ष अपने पक्ष में अवमुक्त करायेगा और रू0 9,00,000/– (रूपये नौ लाख) प्रथम पक्ष जिला कारागार लखनऊ से रिहा होने के एक माह के भीतर जरिये डिमाण्ड ड्राफ्ट द्वितीय पक्ष को अदा करेगा। यदि किन्हीं कारणों से विचारण न्यायालय में जमा धनराशि रू0 9,00,000/–द्वितीय पक्ष के पक्ष में अवमुक्त नहीं होता है। तो उक्त रू0 9,00,000/– का भी भुगतान प्रथम पक्ष द्वारा द्वितीय पक्ष को उसी समय किया जायेगा।

9. यह कि द्वितीय पक्ष भी उपरोक्त भुगतान प्राप्त करके इस आर्थिक विवाद को निपटाने हेतु तैयार है।

10. यह कि प्रथम पक्ष एवं द्वितीय पक्ष के मध्य अब काई विवाद शेष नहीं रह गया है।

11. यह कि उभय पक्ष इस बात से सहमत है कि वे प्रश्नगत आर्थिक विवाद के सम्बन्ध में न तो एक दूसरे के विरूद्ध कहीं कोई शिकायत दर्ज करायेंगे और न ही एक दूसरे के विरूद्ध न्यायालय अथवा सक्षम अधिकारी/प्राधिकारी के समक्ष कोई कार्यवाही संस्थित करेंगे। यदि भविष्य में उनके द्वारा कोई शिकायत/कार्यवाही संस्थित की जाती है तो वह शिकायत/कार्यवाही इस सुलहनामें के शर्तों के अधीन शून्य माने जायेंगे।

12. यह कि दोनों पक्ष इस सुलहनामें के शर्तों के अधीन प्रश्नगत विवाद को समाप्त करने एवं विचारण न्यायलय द्वारा पारित निर्णय व आदेश दिनांकित 07.04.2021 तथा अपर सत्र न्यायाधीश, कक्ष सं0–3, लखनऊ द्वारा पारित निर्णय एवं आदेश दिनांकित 16.01.2021 को अभिखण्डित किये जाने हेतु याचिका दाखिल व निस्तारण कराने में एक दूसरे को सहयोग करेंगे।

अतएव यह सुलहनामा हम उभय पक्षों ने सोच समझकर बिना किसी जोर दबाव या नाजायज व स्वस्थ चित्त मन से समक्ष गवाहान अपने–अपने हस्ताक्षर बनाकर तस्दीक किया जो कि प्रमाण हो और समय पर काम आवे।

24. It is well settled that inherent powers under section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant and nor a specific remedy is provided by the statute. It is also well settled that if an effective alternative remedy is available, the High Court will not exercise its inherent power under this section, specially when the applicant may not have availed of that remedy.

25. Inherent powers under Section 482 of Cr.P.C. include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The court can always take note of any miscarriage of justice and prevent the same by exercising its powers u/s 482 of Cr.P.C. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly and with caution.

26. The High Courts in deciding matters under Section 482 should be guided by following twin objectives, as laid down in the case of **Narinder Singh vs. State of Punjab (2014) 6 SCC 466**:

i. Prevent abuse of the process of the court.

ii. Secure the ends of justice.

iii. To give effect to an order under the Code.

27. In the instant case, it is true that this Court had dismissed the criminal revision and upheld the conviction and sentence passed by the court below but it cannot be lost sight of the fact that this Court has the power to intervene in exercise of the powers vested under section 482 Cr.P.C. only with a view to do the substantial justice or to avoid miscarriage and the spirit of the compromise arrived at between the parties. This is perfectly justified and legal too.

28. I have considered the judgments cited by the learned counsel for the applicant as well as by the learned Counsel for the State and other decisions of the Hon'ble Apex Court and I do not think it necessary to enlist those decisions which are taken into consideration for the purpose of the present proceedings.

29. In the instant case, the applicant is invoking the inherent power as vested under section 482 Cr.P.C. after the dismissal of the revision petition under section 397 Cr.P.C. read with section 401 Cr.P.C. In this circumstances, I have to examine the maintainability of the present application under section 482 Cr.P.C. and also to examine as to whether for entertaining the aforesaid application, any special circumstances are made out or not. The gist of the ratio is reflected in the decision of the Hon'ble Apex Court in the case of **Rajinder Prasad vs. Bashir and Others; AIR 2001 SC 3524**. In that case, it was contended before the Apex Court that as per the earlier revision filed by the accused persons under section 397 of the Code has been rejected by the High Court vide order dated 13.05.1990, they had no right to file the application under section 482 Cr.P.C. with the prayer for quashing the same order. While dealing with the above contention, the Apex Court observed as under:-

> *"We are of the opinion that no special circumstances were spelt out in the subsequent application for invoking the jurisdiction of the High Court under section 482 of the Code and the impugned order is liable to be set aside on this ground alone."*

So it can be legitimately argued and inferred and held that in all cases where the applicants are able to satisfy this court that there are special circumstances which can be clearly spelt out, subsequent application invoking inherent powers under section 482 Cr.P.C. can be moved and cannot be thrown away on the technical argument as to its sustainability.

30. In the case of **Krishan Vs. Krishnaveni**, reported in **(1997) 4 SCC 241**, Hon'ble the Apex Court has held that though the inherent power of the High Court is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the applicant is shown to have already invoked the revisional jurisdiction under section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may in its discretion prevent the abuse of process or miscarriage of justice by exercising jurisdiction under section 482 of the Code.

31. In the case of **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court under Section 482 Cr.P.C itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide

but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

32. For adjudicating the instant case, the facts as stated hereinabove are very relevant. Here, the applicant has attempted to invoke the jurisdiction of this court vested under section 482 Cr.P.C. The embargo of sub section 6 of section 320 Cr.P.C. as pointed out by learned AGA would not come in the way so far as the relief prayed in this application.

33. I am not in agreement that when the adjudication of a criminal offence has reached to the state of revisional level, there cannot be any compromise without permission of the court in all case including the offence punishable under 'N.I. Act' or the offence mentioned in Table-1 (one) can be compounded only if High Court or Court of Sessions grants permission for such purpose. The Court presently, concerned with an offence punishable under 'N.I. Act'.

34. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point I can refer to the following extracts from an academic commentary [Cited from : K.N.C. Pillai, R.V. Kelkar's Criminal Procedure, 5th Edition :

> **"17.2 - compounding of offences -** A crime is essentially a wrong against the society and the State. Therefore, any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognize some of them as compoundable offences and some others as compoundable only with the permission of the court…"

35. Section 147 of NI Act begins with a non obstante clause and such clause is being used in a provision to communicate that the provision shall prevail despite anything to the contrary in any other or different legal provisions. So, in light of the compass provided, a dispute in the nature of complaint under section 138 of N.I. Act, can be settled by way of compromise irrespective of any other legislation including Cr.P.C. in general and section 320 (1)(2) or (6) of the Cr.P.C. in particular. The scheme of section 320 Cr.P.C. deals mainly with procedural aspects; but it simultaneously crystallizes certain enforceable rights and obligation. Hence, this provision has an element of substantive legislation and therefore, it can be said that the scheme of section 320 does not lay down

only procedure; but still, the status of the scheme remains under a general law of procedure and as per the accepted proposition of law, the special law would prevail over general law. For the sake of convenience, I would like to quote the observations of Hon'ble the Apex Court in the case of *Municipal Corporation, Indore vs. Ratnaprabha* reported in *(AIR 1977 SC 308)* which reads as under :

> *"As has been stated, clause (b) of section 138 of the Act provides that the annual value of any building shall "notwithstanding anything contained in any other law for the time being in force" be deemed to be the gross annual rent for which the building might "reasonably at the time of the assessment be expected to be let from year to year" While therefore, the requirement of the law is that the reasonable letting value should determine the annual value of the building, it has also been specifically provided that this would be so "notwithstanding anything contained in any other law for the time being in force". It appears to us that it would be a proper interpretation of the provisions of clause (b) of Section 138 of the Act to hold that in a case where the standard rent of a building has been fixed under Section 7 of the Madhya Pradesh Accommodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961. This view will, in our opinion, give proper effect to the non-obstante clause in clause (b) with due regard to its other provision that the letting value should be "reasonable"*

36. The expression 'special law' means a provision of law, which is not applicable generally but which applies to a particular or specific subject or class of subjects. Section 41 of Indian Penal Code stands on the same footing and defines the phrase special law. In this connection I would like to quote the well accepted proposition of law emerging from various observations made by the Hon'ble Apex Court in different decisions as a gist of the principle and it can be summarised as under:

> *"When a special law or a statute is applicable to a particular subject, then the same would prevail over a general law with regard to the very subject, is the accepted principle in the field of interpretation of statute."*

37. In reference to offence under section 138 of N.I. Act read with section 147 of the said Act, the parties are at liberty to compound the matter at any stage even after the dismissal of the revision application. Even a convict undergoing imprisonment with the liability to pay the amount of fine imposed by the court and/or under an obligation to pay the amount of compensation if awarded, as per the scheme of N.I. Act,

can compound the matter. The complainant i.e. person or persons affected can pray to the court that the accused, on compounding of the offence may be released by invoking jurisdiction of this court under section 482 Cr.P.C. If the parties are asked to approach the Apex Court then, what will be situation, is a question which is required to be considered in the background of another accepted progressive and pragmatic principle accepted by our courts that if possible, the parties should be provided justice at the door step. The phrase *"justice at the door step"* has taken the court to think and reach to a conclusion that it can be considered and looked into as one of such special circumstances for the purpose of compounding the offence under section 147 of the N. I. Act.

38. It is also well settled that the operation or effect of a general Act may be curtailed by special Act even if a general Act contains a non obstante clause. But here is not a case where the language of section 320 Cr.P.C. would come in the way in recording the compromise or in compounding the offence punishable under section 138 of the N.I. Act. On the contrary provisions of section 147 of N.I. Act though starts with a non obstante clause, is an affirmative enactment and this is possible to infer from the scheme that has overriding effect on the intention of legislature reflected in section 320 Cr.P.C.

39. Merely because the litigation has reached to a revisional stage or that even beyond that stage, the nature and character of the offence would not change automatically and it would be wrong to hold that at revisional stage, the nature of offence punishable under Section 138 of the N.I. Act should be treated as if the same is falling under table-II of Section 320 IPC. I would like to reproduce some part of the statement of objects and reasons of the Negotiable Instruments (Amendment & Miscellaneous Provisions) Act, 2002 :

> *"The Negotiable Instrument Act 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instrument Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instrument Act, 1981, namely Section 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.*

2. A large number of cases are reported to be pending under Sections 138 and 142 of the Negotiable Instruments Act in various courts in the country. Keeping in view the large number of complaints under the said Act, pending in various courts, a Working Group was constituted to review Section 138 of the Negotiable Instruments Act, 181 and make recommendations as to what changes were needed to effectively achieve the purpose of that Section.

3. .....

4. Keeping in view the recommendations of the Standing Committee on finance and other R/SCR.A/2491/2018 ORDER representations, it has been decided to bring out, inter alia the following amendments in the Negotiable Instrument Act 1881, namely.

(i) xxxxxx

(ii) xxxxxx

(iii) xxxxxx

(iv) to prescribe procedure for dispensing with preliminary evidence of the complainant.

(v) xxxxxx

(vi) xxxxx

(vii) to make the offences under the Act compoundable. .....

5. xxxxxx

6. The Bill seeks to achieve the above objects."

40. In a commentary the following observations have been made with regard to offence punishable under section 138 of the N.I. Act. [Cited from : Arun Mohan, Some thoughts towards law reforms on the topic of Section 138 Negotiable Instrument Act -Tackling an avalanche of cases] :

"... ... Unlike that for other forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the

> *cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."*

41. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect

42. So the intention of the legislature and object of enacting "Banking", Public Financial Institutions and the Negotiable Instrument Laws (Amended Act) 1988 and subsequent enactment, i.e., Negotiable Instruments (Amendment & Miscellaneous Provisions Act 2002 leads this Court to a conclusion that the offence made punishable under Section 138 of N.I. Act is not only an offence qua property but it is also of the nature of an economic offence, though not covered in the list of statutes enacted in reference to Section 468 of Cr.P.C. Thus, the parties, in reference to offence under Section 138 N.I. Act read with Section 147 of the said Act are at liberty to compound the matter at any stage even after the dismissal of the application.

43. In the instant case, the problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute, furthermore, the arguments on behalf of the opposite parties on the fact that unlike Section 320 Cr.P.C., Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court.

44. I am also conscious of the view that judicial endorsement of the above quoted guidelines as given in the case of **Damodar S. Prabhu (supra)** could be seen as an act of judicial law making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. I have already explained that the scheme contemplated under Section 320 of the Cr.P.C. cannot be followed in the strict sense.

45. In view of the aforesaid discussion, the parties, in reference to offence under Section 138 N.I. Act read with Section 147 of the said Act are at liberty to compound the matter at any stage. The complainant i.e. the person or persons affected can pray to the court that the accused, on compounding of the offence may be released by invoking jurisdiction of this Court under Section 482 Cr.P.C. read with Article 226 of the Constitution of India.

46. Generally, the powers available under Section 482 of the Code would not have been exercised when a statutory remedy under the law is available,

however, considering the peculiar set of facts and circumstances it would not be in the interest of justice to relegate the parties to appellate court. Additionally when both the parties have invoked the jurisdiction of this Court and there is no bar on exercise of powers and the inherent powers of this court can always be invoked for imparting justice and bringing a quietus to the issue between the parties.

47. As discussed above, the court is inclined to hold accordingly only because there is no formal embargo in section 147 of the N.I. Act. This principle would not help any convict in any other law where other applicable independent provisions are existing as the offence punishable under section 138 of the N.I. Act is distinctly different from the normal offences made punishable under Chapter XVII of IPC (i.e. the offences qua property).

48. In view of the observations and in view of the guidelines as laid down in the case of **Damodar S. Prabhu (Supra)** and also in view of the observations made in the judgment referred above and taking into account the fact that the parties have settled the dispute amicably by way of compromise, this Court is of the view that the compounding of the offence as required to be permitted.

49. Accordingly, the present application under section 482 Cr.P.C. is **allowed** in terms of the compromise arrived at between the parties to this litigation out of the Court. The impugned judgment and order dated 07.04.2021 passed by the learned Court of Additional Court No.3 (N.I. Act), Lucknow, whereby the applicant has been convicted under Section 138 of the Negotiable Instrument Act, 1881 and has been directed to undergo imprisonment for two years alongwith fine of Rs.45,00,000/- and in case of default of payment of fine, the applicant has been directed to undergo additional simple imprisonment for a period of one and half year and a sum of Rs.38,00,000/- was also directed to be paid to the complainant as damages, is hereby **modified**. The conviction and sentence under Section 138 of the N.I. Act 1981 in Complaint Case No.7097 of 2017, Police Station Talkatora, District Lucknow (Sanchetna Financial Services Private Limited Vs. Ravindra Kumar Yadav) stands annulled as this court intends, otherwise to secure the ends of justice as provided under section 482 Cr.P.C. The applicant shall be treated as acquitted on account of compounding of the offence with the complainant/person affected.

50. The learned trial court is directed to release the remaining amount of Rs.9,00,000/- deposited by the applicant before the learned Additional Court No.3 (N.I. Act), Lucknow in compliance of the order passed by learned Sessions Judge, Lucknow during the hearing of Criminal Appeal No.165 of

2021 in favour of the opposite party no.2 within fifteen days from the date of certified copy of this judgment and order is produced before it.

51. Office is directed to communicate this order to the learned trial court concerned immediately.

52. No order as to costs.

Order Date :- 27.05.2024
Saurabh

(Shamim Ahmed, J.)