(2016) 09 RAJ CK 0068

RAJASTHAN HIGH COURT (JAIPUR BENCH)

Case No: Criminal Misc. Petition No. 867 of 2016

Padma Sharma		APPELLANT
	Vs	
State of Rajasthan		RESPONDENT

Date of Decision: Sept. 30, 2016

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, Section 147

Citation: (2017) ACD 557 : (2017) 1 AICLR 963 : (2017) 1 CivCC 491 : (2017) 1 CriCC 548 : (2017) 1 CriLR 184 : (2017) 1 NIJ 466 : (2016) 2 WLCRajUC 772

Hon'ble Judges: Mr. Deepak Maheshwari, J.

Bench: Single Bench

Advocate: Ms. Meenakshi Pareek, Public Prosecutor and Mr. Narendra Pareek on behalf of Mr. Anoop Agarwal, Advocates, for the Respondent No. 2; Mr. G.P. Sharma, Advocate, for the Petitioner

Final Decision: Dismissed

Judgement

Mr. Deepak Maheshwari, J. - Heard learned counsel for the petitioner as also learned counsel appearing for the respondent No. 2 and learned Public Prosecutor.

2. By way of this criminal misc. petition, a prayer has been made on behalf of the accused petitioner to quash and set aside the order dated 07.12.2015 passed by Addl. District & Sessions Judge No. 4, Jaipur Metropolitan by which the application filed by the petitioner under Section 147 NI Act has been rejected. Prayer has also been sought to pass an order for compounding of the offence on payment of compensation held by the trial Court.

3. On perusal of the documents annexed with the petition as also from the facts narrated during arguments, it comes out that the learned trial Court held the accused petitioner guilty vide judgment dated 21.2.2014 for the offence punishable under Section 138 NI Act and awarded sentence of simple imprisonment for two years along with compensation of Rs.6,00,000/- to be paid to the complainant.

4. Against the said order, appeal has been preferred by the accused petitioner. During the pendency of the appeal, an application has been filed by the petitioner under Section 147 NI Act, which was vehemently opposed by the complainant saying that she is not at all ready and willing to compound the offence. After considering the judgments cited by both the parties, learned trial Court rejected the said application vide impugned order dated 7.12.2015 on the ground that the complainant is not ready and willing to compound the offence.

5. The petitioner has preferred this misc. petition against the said order.

6. During the course of arguments, learned counsel for the petitioner has referred to the judgment given by Hon''ble Supreme Court in case of **Damodar S. Prabhu v. Sayed Babalal H., reported in 2010 (1) WLC p.745** whereby some guidelines have been laid for allowing the compounding the offence under the NI Act. It has also been laid down that the compounding of the said offence can be made even at the stage of revision and the appeal. Learned counsel for the petitioner has also referred to the judgment given in **Ashok Kumar v. State of Raj. & Anr., reported in 2016 (1) WLC (Raj.) UC p.615** wherein the criminal revision preferred by the complainant against the order of giving the benefits under the Probation of Offenders Act after deposition of the amount by the accused in compliance of the order passed in misc. petition was rejected.

7. Per contra, learned counsel for the complainant/respondent No. 2 has referred to the judgment in case of **Phool Chand Saraogi v. State of Raj. & Anr., reported in 2008 (2) Cr.L.R. (Raj.) p.1506** wherein it has been specifically laid down that though the offence under Section 138 NI Act is compoundable as per Section 147 of the Act but when the complainant is not willing to compromise the matter, it cannot be said that the matter stands compounded. He has also referred to the judgment in **JIK Industries Limited & Ors. v. Amarlal V. Jumani & Anr., reported in AIR 2012 SC p.1079**. Relevant part of the said judgment from para 73 can be produced as below :-

"... ... ... There is no other statutory procedure for compounding of offence under N.I. Act. Therefore, Section 147 of the N.I. Act must be reasonably construed to mean that as a result of the said Section the offences under N.I. Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of N.I. Act ... ..."

8. Having considered the rival contentions and after going through the judgments cited by both the sides, this Court is of the view that the complainant/respondent No. 2 is not at all ready and willing to compound the offence punishable under Section 138 NI Act. Observing this fact, the appellate Court has rejected the application filed under Section 147 NI Act vide impugned order dated 7.12.2015. Taking the principles laid down in JIK Industries Limited''s case (supra), it is clear that unless the complainant is ready and willing to compound the offence, it cannot be allowed to be compounded notwithstanding

the provisions contained in Section 147 NI Act. Section 147 of the Act only permits the compounding of such offence but there is no such intention of the legislature to compel the complainant to get the offence compounded if the accused is ready and willing to deposit the amount of cheque.

9. It is evidently clear in the matter in the hand that the complainant/respondent No. 2 is not ready and willing to compound the offence. The impugned order dated 7.12.2015 has been passed by the appellate Court on account of this fact, in which no infirmity is found. Hence, this misc. petition, challenging the order dated 07.12.2015, being devoid of any force, cannot be allowed and the same is hereby dismissed.