

(2011) 03 JH CK 0023

Jharkhand High Court

Case No: Criminal Revision No. 414 of 2007

Deepak Kumar Mehto @ Mahto

APPELLANT

Vs

State of Jharkhand and Nand
Kishore Sah

RESPONDENT

Date of Decision: March 14, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 320
- Negotiable Instruments Act, 1881 (NI) - Section 138, 147

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.K. Sinha, J.

This Cr. Revision is directed against the judgment dated 20th March 2007 passed in Cr. Appeal No. 119 of 2006 by the learned Additional Sessions Judge, F.T.C. No. VII Hazaribagh by which the judgment of conviction recorded by Sri. Santhosh Kumar, Judicial Magistrate, Ist Class, Hazaribagh in connection with Complaint Case No. 572 of 2005 corresponding to T.R. No. 1217 of 2006 against the Petitioner u/s 138 of the Negotiable Instrument Act and order of sentence passed against him was affirmed and his appeal was dismissed.

2. By the said judgment Petitioner was sentenced to undergo simple imprisonment for a period of one year and to pay fine of Rs. 35,000/-with the observation that on realization of such amount from the Petitioner, a sum of Rs. 30,000/-would be given to the complainant-opposite party No. 2.

3. During pendency of this Cr. Revision an interlocutory application No. 2496 of 2010 was filed on behalf of the Petitioner requesting that the Cr. Revision be decided in view of the decision of the Apex Court rendered in [Damodar S. Prabhu Vs. Sayed Babalal H.](#) . The Petitioner further contended that he had already paid all the

amounts due to the O.P. No. 2 and there was no balance against him and that both have already entered into compromise and they were ready to compound the offence as per provisions of composition u/s 147 of the Negotiable Instrument Act. A counter affidavit has been filed on behalf of the O.P. No. 2 Nand Kishore Sah wherein admitted that he had entered into compromise with the Petitioner and had no longer grievance against the Petitioner. It was further stated in I.A. No. 2496 of 2010 which was filed in the form of counter affidavit that he (O.P. No. 2) had already received the entire amount from the Petitioner and there was no due against him and that he would have no objection if the I.A. filed on behalf of the Petitioner would be allowed. The counter affidavit has been signed by the O.P. No. 2 on 20.11.2010 duly identified by his counsel Miss. Rupa Kumari.

4. The Apex court in [Damodar S. Prabhu Vs. Sayed Babalal H.](#), propounded the guidelines for disposal of the case relating to the offence u/s 138 of the Negotiable Instrument Act 1881 in view of the provisions of composition of dispute as laid down u/s 147 of the said Act. The guidelines are as follows:

(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.

5. The Apex court in the said decision held:

We are also conscious of the view that the judicial endorsement of the above quoted Guidelines 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. We have already explained that the scheme contemplated u/s 320 Code of Criminal Procedure cannot be followed in the strict sense. In view of the legislative

vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act.

6. In the facts and circumstances of the case, parties are allowed to compound their dispute u/s 147 of the Negotiable Instrument Act on full and final satisfaction of the opposite party No. 2 who had endorsed that he had received all the amounts what was due to the Petitioner. Consequent to the composition of the dispute, the Petitioner Deepak Kumar Mehto @ Mahto is acquitted by implication of law u/s 320(8) of Code of Criminal Procedure however, subject to condition that he would deposit 15% of the cheque amount to the Jharkhand State Legal Services Authority within 30 days of this order.

7. This Cr. Revision is allowed with the said observation.