

Before Vinod S. Bhardwaj, J.

M/S JAP INTERIORS THROUGH ITS PROPRIETOR —
Petitioner

versus

M/S I.S. STEEL FABRICATION THROUGH ITS PROPRIETOR
—Respondent

CRR No. 640 of 2022

April 25, 2022

*Code Of Criminal Procedure, 1973— Ss.82, 397, 482—
Negotiable Instruments Act, 1881—S.147— Stage of Proceedings—
Offence sought to be compounded at the stage of Revision before the
High Court. Powers under Section 147 of the NI Act can be invoked
at any stage— Courts to be liberal in exercising power— Offence
compounded— Petition allowed.*

Held, that the issue regarding compounding under the Negotiable Instruments Act at the stage of appeal as well as revision has come before this court as well as before the Hon'ble Supreme Court and they have upheld that the powers under Section 147 of the Negotiable Instruments Act can be invoked at any stage of the proceedings i.e. at the stage of trial, appeal or at revisional jurisdiction and that the courts should be liberal in exercising such powers.

(Para 3)

Amit Jain, Advocate, *for the petitioner.*

Vivek Goyal, Advocate, for respondent.

VINOD S. BHARDWAJ, J. (Oral)

CRM-14492-2022

The instant application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for placing on record impugned order dated 26.10.2021 passed by the Additional Sessions Judge, Gurugram whereby the petitioner was declared proclaimed person, on the date of pronouncement of the judgment in the appeal preferred by the petitioner before the Lower Appellate Court.

The application is allowed as prayed for and order dated 26.10.2021 is taken on record.

CRR-640-2022

(1) The challenge raised in the instant revision petition is to the impugned judgment dated 26.10.2021 passed by the Additional Sessions Judge, Gurugram whereby the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 25.07.2017 and 27.07.2017 respectively passed by the Judicial Magistrate First Class, Gurugram in Criminal Complaint No. 1485 of 16.05.2015/21.05.2015 (CIS No. NACT 2328 of 2015) has been dismissed. Along with same, a challenge was also raised to the order dated 26.10.2021 passed by Additional Sessions Judge, Gurugram whereby the petitioner was declared as a proclaimed person on account of his non-appearance on the said date.

(2) Along with the main revision petition, the petitioner had also filed Criminal Miscellaneous No. 12851 of 2022 invoking the jurisdiction of this Court under Section 147 of the Negotiable Instruments Act, 1881 seeking compounding of the offence. It was contended that the matter has been amicably resolved between the petitioner and the complainant-respondent whereupon a demand draft bearing No. 417751 dated 14.03.2022 amounting to Rs.3, 85,000/- and a demand draft bearing No. 417752 dated 16.03.2022 amounting to Rs. 11,000/- drawn on Punjab National Bank, Palam Vihar, Gurgaon had been handed over to the respondent. The said contention was accordingly recorded and the parties were directed to appear before the Illaqa Magistrate to determine the validity and genuineness of the claim raised by the petitioner. A report bearing Memo No. 138 (A) dated 12.04.2022 has been received from the Judicial Magistrate First Class, Gurugram which reads thus as under:

“(i) Naib Court Constable Karan Singh, Belt No. 2585/GGM stated that no FIR under Section 174 A IPC has been registered in the present case. He also tendered report of JMFC & SHO PS Shivaji Nagar, Gurugram.

a. Shri Subhash Chand, Ahlmad reported that no any accused has been declared as Proclaimed Person in the present case. The accused was convicted vide judgment dated 25.07.2017 and appeal filed against the order was dismissed by the Court of Shri Phalit Sharma, Ld. Additional District & Sessions Judge, Gurugram vide judgment dated 26.10.2021.

b. Convict Adarsh Meni S/o Swaranjit Meni produced in

custody by HC Anil Kumar, PS Beghera in compliance of arrest warrants dated 21.02.2022. Conviction warrants was prepared and accused was sent to District Jail, Bhondsi, Gurugram for undergoing punishment awarded vide order dated 27.07.2017.

c. It is submitted that I am satisfied that the matter has been settled between complainant Salim Khan, Proprietor of M/s I.S. Steel Fabrication and Convict Adarsh Meni amicably/voluntarily without any pressure or coercion and the compromise appears genuine on the face of the record.

d. The matter has been compromised between the parties.

(3) The issue regarding compounding under the Negotiable Instruments Act at the stage of appeal as well as revision has come before this court as well as before the Hon'ble Supreme Court and they have upheld that the powers under Section 147 of the Negotiable Instruments Act can be invoked at any stage of the proceedings i.e. at the stage of trial, appeal or at the revisional jurisdiction and that the courts should be liberal in exercising such powers.

(4) The Hon'ble Supreme Court in the matter of ***K.M. Ibrahim versus K.P Mohammed & Another***, passed in Criminal Appeal No.2281 of 2009 decided on 02.12.2009 held as under:-

“5. Appearing for the appellant, Mr. Mukul Rohtagi, learned Senior Advocate, contended that since a specific power had been given to the parties to a proceeding under the Negotiable Instruments Act under Section 147 to compound the offence, there could be no reason as to why the same cannot be permitted even after conviction, which had been affirmed upto the High Court. It was urged that in order to facilitate settlement of disputes, the legislature thought it fit to insert Section 147 by Amending Act 55 of 2002. Such amendment came into effect from 6th February, 2003, and provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under the Act would be compoundable.

6. Mr. Rohtagi urged that in view of the non-obstante clause, the provisions of Section 147 were given an overriding effect over the Code and in view of the clear mandate given to the parties to compound an offence under

the Act, reference to Section 320 Cr.P.C. can be made for purposes of comparison only in order to understand the scope of Section 147 of the Negotiable Instruments Act.

7. Mr. Rohtagi submitted that the said position had been accepted by this Court in various decisions, such as in the case of *O.P. Dholakia vs. State of Haryana & Anr.* [(2000) 1 SCC 762], wherein it was held that since the petitioner had already entered into a compromise with the complainant and the complainant had appeared through counsel and stated that the entire money had been received by him and he had no objection if the conviction already recorded under Section 138 of the Negotiable Instruments Act is set aside, the Hon'ble Judges thought it appropriate to grant permission, in the peculiar facts and circumstances of the case, to compound the offence. While doing so, this Court also indicated that necessarily the conviction and sentence under Section 138 of the Act stood annulled.

8. The said view has been consistently followed in the case of

(1) *Anil Kumar Haritwal & Anr. vs. Alka Gupta & Anr.* [(2004) 4 SCC 366];

(2) *B.C. Seshadri vs. B.N. Suryanarayana Rao* [2004 (11) SCC 510] decided by a three Judge Bench;

(3) *G. Sivarajan vs. Little Flower Kuries & Enterprises Ltd. & Anr.* [(2004) 11 SCC 400];

(4) *Kishore Kumar vs. J.K. Corporation Ltd.* [(2004) 13 SCC 494];

(5) *Sailesh Shyam Parsekar vs. Baban* [(2005) 4 SCC 162];

(6) *K. Gyansagar vs. Ganesh Gupta & Anr.* [(2005) 7 SCC 54];

(7) *K.J.B.L. Rama Reddy vs. Annapurna Seeds & Anr.* [(2005) 10 SCC 632];

(8) *Sayeed Ishaque Menon vs. Ansari Naseer Ahmed* [(2005) 12 SCC 140];

(9) *Vinay Devanna Nayak vs. Ryot Sewa Sahakari Bank*

Ltd. [(2008) 2 SCC 305], wherein some of the earlier decisions have been noticed; and

(10) *Sudheer Kumar vs. Manakkandi M.K. Kunhiraman & Anr.* [2008 (1) KLJ 203], which was a decision of a Division Bench of the Kerala High Court, wherein also the issue has been gone into in great detail.

9. The golden thread in all these decisions is that once a person is allowed to compound a case as provided for under Section 147 of the Negotiable Instruments Act, the conviction under Section 138 of the said Act should also be set aside. In the case of *Vinay Devanna Nayak (supra)*, the issue was raised and after taking note of the provisions of Section 320 Cr.P.C., this Court held that since the matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of conviction and sentence recorded by all the courts were set aside and the appellant was acquitted of the charge leveled against him.

10. The object of Section 320 Cr.P.C., which would not in the strict sense of the term apply to a proceeding under the Negotiable Instruments Act, 1881, gives the parties to the proceedings an opportunity to compound offences mentioned in the table contained in the said section, with or without the leave of the court, and also vests the court with jurisdiction to allow such compromise. By virtue of Sub-Section (8), the Legislature has taken one step further in vesting jurisdiction in the Court to also acquit the accused/convict of the offence on the same being allowed to be compounded.

11. Inasmuch as, it is with a similar object in mind that Section 147 has been inserted into the Negotiable Instruments Act, 1881, by amendment, an analogy may be drawn as to the intention of the Legislature as expressed in Section 320(8) Cr.P.C., although, the same has not been expressly mentioned in the amended section to a proceeding under Section 147 of the aforesaid Act.

12. Apart from the above, this Court is further empowered under Article 142 of the Constitution to pass appropriate orders in line with Sub-Section (8) of Section 320 Cr.P.C. in an application under Section 147 of the aforesaid Act, in order to do justice to the parties.

13. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. The various decisions cited by Mr. Rohtagi on this issue does not add to the above position.

14. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.

(5) Reference can also be made to the judgment in the matter of *Cochin Hotels Co.(P) Ltd & Ors versus Kairali Granites & Ors*¹, and *K. Subramanian versus R. Rajathi represented by PAOP Kalippan*², which held that the petitioner can resort to a compounding mechanism in terms of Section 147 of the Negotiable Instruments Act as offence related to dishonour of cheque has a compensatory profile and it should be given precedence to cumulative mechanism. The offence is almost a civil wrong which has been clothed in a criminal overtones, therefore, priority should be given to compensatory mechanism.

(6) It was also held in the matter of *Damodar S. Prabhu versus Sayed Babalal H.*³ and *Kaushalya Devi Massand versus Roopkishore Khore*⁴, to the effect that compromise in question would definitely go a long way to strengthen the mutual relationship between the parties and would serve as an ever lasting tool in their favour.

¹ (2005) 12 SCC 234

² (2010)15 SCC 352

³ AIR 2010 SC 1907

⁴ (2011) 4 SCC 593

Such an exercise would be in consonance with the spirit of Section 147 of the Negotiable Instruments Act, 1881.

(7) It was also held in the matter of ***Ramphal versus State of Haryana*** passed in CRM-M-9497 of 2021 and ***Bhoma Ram versus State of Haryana*** passed in CRM-M-4549 of 2021 ***decided*** on 10.02.2022, this Court has observed as under:

“12. A co-ordinate Bench of this Court in **CRM-M- 43813-2018** titled as “**Baldev Chand Bansal vs. State of Haryana and another**”, **decided on 29.01.2019** has held as under:-

“Prayer in this petition is for quashing of FIR No.64 dated 15.02.2017 filed under Section 174-A of the Indian Penal Code registered at Police Station Sector-5, Panchkula and all other subsequent proceedings arising thereof as well as order dated 24.10.2016 passed by the trial Court vide which a direction was issued to register the aforesaid FIR.

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Learned counsel for the petitioner has relied upon the decisions rendered by this Court in “ **Vikas Sharma vs. Gurpreet Singh Kohli and another (supra), 2017, (3) L.A.R.584, Microqual Techno Limited and others Vs. State of Haryana and another, 2015 (32) RCR (CrI.) 790 and “Rajneesh Khanna Vs. State of Haryana and another” 2017(3) L.A.R. 555** wherein in an identical circumstance, this Court has held that since the main petition filed under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, therefore, continuation of proceedings under Section 174A of IPC shall be nothing but an abuse of the process of law.

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In view of the same, I find merit in the present petition and accordingly, present petition is allowed and the impugned order dated 24.10.2016 passed by Judicial Magistrate, 1st Class, Panchkula as well as FIR No.64 dated 15.02.2017 registered under Section 174-A of the Indian Penal Code at Police Station Sector-5, Panchkula and all other subsequent proceedings arising thereof, are hereby quashed.”

13. A perusal of the above judgment would show that in a similar case where the FIR had been registered under Section 174-A IPC in view of the order passed in proceedings under Section 138 of the Act, while declaring the petitioner therein as proclaimed offender, a co-ordinate Bench after relying upon various judgments observed that once the main petition under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, the continuation of proceedings under Section 174-A IPC is nothing but an abuse of the process of law. The said aspect was one of the main consideration for allowing the petition and setting aside the order declaring the petitioner therein as proclaimed person as well as quashing of the FIR under Section 174-A IPC.

14. Another co-ordinate Bench of this Court in a case titled as **“Ashok Madan vs. State of Haryana and another”** reported as **2020(4) RCR (Criminal) 87** has also held as under:-

“No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174A I.P.C. is independent of the main case, therefore, merely because the main case has been dismissed for want of prosecution, the present petition cannot be allowed, however, keeping in view the fact that the present FIR was registered only on account of absence from the proceedings in the main case which had been subsequently regularised by the court while granting bail to the petitioner, the default stood condoned. In such circumstances, continuation of proceedings under Section 174A I.P.C. shall be abuse of the process of court.

7. Accordingly, the petition is allowed. FIR No.446 dated 21.08.2017, registered under Section 174A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

15. A perusal of the relevant extract of the above judgment would show that where the main case was dismissed for want of prosecution, it was observed that the continuation of proceedings under Section 174-A IPC shall be abuse of the process of court.

16. In the present case as is apparent from the facts hereinabove, the complaint under Section 138 of the N.I. Act has been withdrawn on account of compromise. In such a situation, continuation of the proceedings under Section 174-A IPC would be an abuse of process of Court.”

(8) It was also held in the matter of ***Baldev Chand Bansal versus State of Haryana and Another*** passed in CRM-M-43813 of 2018 decided on 29.01.2019, this Court has observed as under:

“Learned counsel for the petitioner has relied upon the decisions rendered by this Court in “ *Vikas Sharma vs. Gurpreet Singh Kohli and another* (supra), 2017, (3) L.A.R.584, *Microqual Techno Limited and others Vs. State of Haryana and another*, 2015 (32) RCR (Crl.) 790 and “*Rajneesh Khanna Vs. State of Haryana and another*” 2017(3) L.A.R. 555 wherein in an identical circumstance, this Court has held that since the main petition filed under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, therefore, continuation of proceedings under Section 174A of IPC shall be nothing but an abuse of the process of law.

After hearing learned counsel for the parties and in view of the judgment passed in *Vikash Sharma* (supra) case, considering the fact that the complaint filed under Section 138 of the Act was compromised as the petitioner has paid the entire cheque amount to the complainant and later on the same was withdrawn on 09.09.2017, I find merit in present petition as the petitioner has also shown a bona fide cause for non-appearance before the trial Court on the date when the impugned order was passed on 24.10.2016.”

(9) It was also held in the matter of ***Rajneesh Khanna versus State of Haryana and another*** passed in CRM-M-3813 of 2017 decided on 26.10.2017, this Court has observed as under:

“4. Learned counsel for the petitioner has further argued that even otherwise, the matter has been compromised between the parties and the respondent No.2- complainant has withdrawn the very complaint under Section 138 of the NIA Act filed against the petitioner. He states that in these circumstances, the impugned order dated 05.09.2016 as well

as the FIR in question along with all subsequent proceedings are liable to be quashed. In support of his contentions, he has relied upon the order dated 13.09.2017 passed by the coordinate Bench of this Court in CRM No.M-32465 of 2017 titled as Vikas Sharma Versus Gurpreet Singh Kohli and another.

7. Perusal of the record reveals that non- appearance of the petitioner before learned trial Court is justified for the reason that he was not served at the given address. Moreover, after passing of the impugned order dated 05.09.2016 by learned trial Court, the petitioner has been granted anticipatory bail by learned Additional Sessions Judge, Ambala vide order dated 02.01.2017. Therefore, in these circumstances particularly when the matter has been compromised between the parties and the respondent No.2-complainant has withdrawn the complaint under Section 138 of the NIA Act, continuation of criminal proceedings against the petitioner under Section 174- A IPC would amount to abuse of process of law.”

(10) In view of the position in law noticed above laying down the scope of Section 147 of Negotiable Instruments Act, 1881 as well as the quashing of proceedings under Section 82 Cr.P.C. where principal dispute has already been settled, there is no iota of doubt that the case of the petitioner is covered by the ratio laid down in the said precedent judgments. The offence is thus ordered to be compounded in light of the substantive statutory provision and judicial mandate.

(11) The judgment order dated 26.10.2021 declaring the petitioner as proclaimed person passed by the Additional Sessions Judge, Gurugram and the judgment of conviction and order of sentence dated 25.07.2017 and 27.07.2017 respectively passed by the Judicial Magistrate First Class, Gurugram in criminal complaint No. 1485 of 16.05.2015/21.05.2015 (CIS No. NACT 2328 of 2015) are accordingly set aside. The petitioner shall be released on bail subject to his involvement, if any, in any other case, upon payment of cost of Rs. 10,000/- to be deposited by the petitioner with the ***District Legal Services Authority, Gurugram*** within one month from the date of receipt of certified copy of this order.

Petition is allowed.