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K.M. IBRAHIM

v.

K.P. MOHAMMED AND ANR.

(Criminal Appeal No. 2281 of 2009)

DECEMBER 02, 2009

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[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Negotiable Instruments Act, 1881 – ss.138 and 147:

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Dishonour of cheque – Conviction of appellant u/s.138 – Affirmed by High Court – Compromise between parties – Application u/s.147 for compounding of the offence u/s.138 – Held: S.147 does not bar the parties from compounding offence u/s.138 even at the appellate stage of proceedings – Analogy as to intention of Legislature as expressed in s.320(8)

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CrPC – Power under Article 142 of the Constitution to pass appropriate orders in line with s.320(8) CrPC in application under s.147, in order to do justice to the parties – On facts, parties allowed to compound the offence since they had settled their disputes – Appellant consequently acquitted –

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Code of Criminal Procedure, 1973 – s.320 – Constitution of India, 1950 – Articles 136 and 142.

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Appellant issued cheque to first respondent in discharge of a legally enforceable debt. The cheque was dishonoured on account of insufficiency of funds. The Trial Court convicted the appellant u/s.138 of the Negotiable Instruments Act, 1881. The conviction was affirmed by the High Court.

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Dispute arose as to whether compounding of the offence under s.138 of the Act could be permitted under s.147 of the Act read with s.320 CrPC.

It was contended by the appellant that since a

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specific power had been given to the parties to a proceeding under the Negotiable Instruments Act under s.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 s.147 by Amending Act 55 of 2002 which provided that notwithstanding anything contained in the CrPC, every offence punishable under the Act would be compoundable. The appellant urged that in view of the non-obstante clause, the provisions of s.147 were given an overriding effect over the CrPC and in view of the clear mandate given to the parties to compound an offence under the Act, reference to s.320 CrPC can be made for purposes of comparison in order to understand the scope of s.147 of the Act.

Allowing the appeal, the Court

HELD: 1.1. The object of Section 320 CrPC, 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. Inasmuch as, it is with a similar object in mind that s.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 s.320(8) CrPC, although, the same has not been expressly mentioned in the amended section to a proceeding under Section 147

A of the Act. [Para 9] [1307-A-D]

B 1.2. The Supreme Court is further empowered under Article 142 of the Constitution to pass appropriate orders in line with Sub-Section (8) of s.320 CrPC in an application under s.147 of the Act, in order to do justice to the parties. [Para 10] [1307-E]

C 1.3. As far as the *non-obstante* clause included in s.147 of the Act is concerned, the Act being a special statute, the provisions of s.147 will have an overriding effect over the provisions of the Code relating to compounding of offences. [Para 11] [1307-F]

D 1.4. Once a person is allowed to compound a case as provided for under s.147 of the Negotiable Instruments Act, 1881, the conviction under s.138 of the said Act should also be set aside. [Para 8] [1306-F]

E *O.P. Dholakia v. State of Haryana & Anr. (2000) 1 SCC 762; Anil Kumar Haritwal & Anr. v. Alka Gupta & Anr. (2004) 4 SCC 366; B.C. Seshadri v. B.N. Suryanarayana Rao 2004 (11) SCC 510; G. Sivarajan v. Little Flower Kuries & Enterprises Ltd. & Anr. (2004) 11 SCC 400; Kishore Kumar v. J.K. Corporation Ltd. (2004) 13 SCC 494; Sailesh Shyam Parsekar v. Baban 2005 (4) SCC 162; K. Gyansagar v. Ganesh Gupta & Anr. (2005) 7 SCC 54; K.J.B.L. Rama Reddy v. Annapurna Seeds & Anr. (2005) 10 SCC 632; Sayeed Ishaque Menon v. Ansari Naseer Ahmed (2005) 12 SCC 140 and Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd. (2008) 2 SCC 305, relied on.*

G *Sudheer Kumar v. Manakkandi M.K. Kunhiraman & Anr. (2008) 1 KLJ 203, approved.*

H 2. In the present case, the application under s.147 of the Negotiable Instruments Act, 1881 was made by the parties after the proceedings had been concluded before

the Appellate Forum. However, s.147 of the Act does not bar the parties from compounding an offence under s.138 even at the appellate stage of the proceedings. Accordingly, no reason is found to reject the application under s.147 of the Act even in a proceeding under Article 136 of the Constitution. Since the parties have settled their disputes, in keeping with the spirit of s.147 of the Act, the parties are allowed to compound the offence, the judgment of the courts below are set aside and the appellant is acquitted of the charges against him. [Paras 12 and 13] [1307-G-H; 1308-A-B]

Case Law Reference:

(2000) 1 SCC 762	relied on	Para 7	
(2004) 4 SCC 366	relied on	Para 7A	
(2004) (11) SCC 510	relied on	Para 7A	
(2004) 11 SCC 400	relied on	Para 7A	
(2004) 13 SCC 494	relied on	Para 7A	
(2005) (4) SCC 162	relied on	Para 7A	
(2005) 7 SCC 54	relied on	Para 7A	
(2005)10 SCC 632	relied on	Para 7A	
(2005)12 SCC 140	relied on	Para 7A	
(2008)2 SCC 305	relied on	Para 7A	
(2008)(1) KLJ 203	approved	Para 7A	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2281 of 2009.

From the Judgment & Order dated 1.1.2009 of the High Court of Kerala at Ernakulam in Criminal Revision Petition No. 387 of 2005.

A Jayanth Muthraj, Sindhu T.P., Malavika G., Nishe Rajen
Shonker for the Appellants.

Roy Abraham, Himinder Lal for the Respondents.

B The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Delay condoned.

2. Leave granted.

C 3. The appellant issued a cheque to the first respondent
for an amount of Rs.95,000/- in discharge of a legally
enforceable debt. However, when the cheque was presented
by the first respondent to his bank, the same was dishonoured
on account of insufficiency of funds in the account of the
appellant. The respondent thereupon issued statutory notice to
D the appellant within the prescribed time limit informing the
appellant about the dishonor of the cheque and calling upon him
to pay the amount due. Since the appellant failed to pay the
amount in time, the respondent filed a complaint before the
Chief Judicial Magistrate, Kasargode. Considering the
E evidence on record, the Trial Court found the accused guilty of
the offence with which he had been charged and sentenced him
to undergo rigorous imprisonment for a period of one year and
to pay a fine of Rs.1,05,000/-. In default of payment of fine, it
was ordered that the appellant would undergo rigorous
F imprisonment for a further period of three months. If, however,
the fine was realized, directions were given that a sum of
Rs.1,00,000/- should be given to the respondent by way of
compensation.

G 4. Aggrieved by the said judgment, the appellant filed
Criminal Appeal No.74 of 2003. While affirming the conviction,
the Appellate Court reduced the sentence to a period of one
month and a fine of Rs.95,000/-. In default of said payment, the
appellant was directed to undergo imprisonment for a further
period of two months.

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5. The said order was challenged before the High Court, which decided the matter in the light of Section 357(3) Cr.P.C. The High Court dismissed the revision against which the present appeal has been filed. A

6. At the very initial stage of hearing, a question was raised on behalf of the appellant as to whether an offence under Section 138 of the Negotiable Instruments Act, 1881, could be compounded under Section 147 of the said Act read with Section 320 Cr.P.C. B

7. 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. 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. 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 C
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- A 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.

- 7A. 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) *Sayed 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.

8. 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. A

9. 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. 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. B C D

10. 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. E

11. 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. F G

12. 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 H

A 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.

B 13. Since the parties have settled their disputes, in keeping with the spirit of Section 147 of the Act, we allow the parties to compound the offence, set aside the judgment of the courts below and acquit the appellant of the charges against him.

C 14. The appeal is, accordingly, allowed in the aforesaid terms.

R.P.

Appeal allowed.