

HIGH COURT OF MADHYA PRADESH,

BENCH AT INDORE

MCRC NO.5672/2016

(Sureshchand vs Prakashchand)

13.08.2018 (INDORE):

Shri Lokesh Mehta, Advocate for the petitioner.

This petition has been filed under Section 482 of Cr.P.C. against the order dated 28.05.2016 passed by the Judicial Magistrate First Class, Indore in Criminal Case No.484/1997 whereby the petitioner's application under Section 320 of Cr.P.C. for compounding the offence has been dismissed.

2. In brief the facts giving rise to the present petition are that a dispute had arisen between the parties under Section 138 of the Negotiable Instruments Act and a Criminal Case No.484/1997 was registered against the petitioner at the instance of the respondent and vide order dated 01.02.2000 the learned Judge of the Trial Court had acquitted the petitioner. However, in an appeal preferred by the respondent before this Court which was registered as Cr.A. No.786/2000, the order of acquittal was set aside by this Court vide judgment dated 18.03.2008 and the petitioner was convicted under Section 138 of the Negotiable Instruments Act and was sentenced to suffer three months' simple imprisonment and was also directed to pay the compensation

of Rs.1,10,000/-. The petitioner was also directed to mark his presence on 07.07.2008 before the Trial Court and the Trial Court was directed to send the petitioner to jail for serving out the jail sentence.

3. Learned counsel for the petitioner has submitted that on the same date i.e. 18.03.2008 the petitioner had filed an application under Section 320 of Cr.P.C. for compounding of the offence, however the same was dismissed as not maintainable but a liberty was reserved to the parties to file fresh application before the appropriate forum. Subsequently, the petitioner again filed an application under Section 320 of Cr.P.C. before the Trial Court on 17.05.2016 when the petitioner came to know that the arrest warrant in the present case has been issued for the non-compliance of the order passed by the High Court in Cr.A. No.786/2000 and the same came to be dismissed on 28.05.2016 wherein the learned Judge of the lower Court has dismissed the same holding that since the respondent's appeal has already been allowed by the High Court wherein the petitioner has been convicted and has been directed to undergo a sentence of three months' simple imprisonment, in the circumstances the application at this stage cannot be entertained as the same is not maintainable.

4. The counsel for the petitioner has assailed the aforesaid order and has submitted that the petitioner has

already paid a sum of Rs.1,10,000/- to the respondent and has also filed a receipt issued by the respondent that he has already received the amount of Rs.1,10,000/- on 18.03.2008. Thus the counsel has submitted that nothing survives to be decided in this matter as the amount in dispute has already been paid in full in compliance of the order passed by this Court on 18.03.2008 in Criminal Appeal No.786/2000. Thus the counsel has submitted that since this Court vide its order dated 18.03.2008 has reserved a liberty to the petitioner to move a proper application before the appropriate forum, hence the only forum available to the petitioner was the Court where the execution of the aforesaid order was pending and by which the warrants were issued to the petitioner.

5. Since the respondents were already served and nobody has appeared in this case, this petition remains unopposed.

6. Heard.

7. After giving a careful consideration to the submissions made by the learned counsel for the petitioner as also after perusing the orders passed by the Trial Court as also by this Court in Cr.A. No.786/2000 this Court is of the considered opinion that no case for interference is made out as the petitioner has not been able to make out any case for interference especially when the respondent's appeal was already allowed by this Court and the petitioner was

convicted and was directed to serve the three months' simple imprisonment.

8. In the circumstances, no illegality appears to have been committed by the learned Judge of the lower Court in passing the impugned order dated 28.05.2016 even otherwise the learned counsel for the petitioner has also not been able to show any provision which would entitle this Court to entertain the application under Section 320 of Cr.P.C. after the judgment has been delivered by this Court on 18.03.2008, this Court has already become *functus officio* to deal with the matter any further.

9. In the circumstances, no case for interference is made out. Accordingly, the petition stands **dismissed**.

**(SUBODH ABHYANKAR)**  
**JUDGE**

DV