

Ajeem Mohammad vs Mohammad Samsheer Khan

06/10/2015

Shri Jitendra Arya, Advocate for the applicant.

Shri Neeraj Asar, Advocate for the respondent.

With the consent of parties, the matter is heard finally.

The applicant has filed this revision petition against the judgment of conviction and order of sentence dated 07.04.2015 passed by 11th Additional Sessions Judge, Bhopal in Criminal Appeal No.668/2014 dismissing the appeal filed by the applicant against the judgment of conviction and order of sentence dated 11.06.2014 passed by Judicial Magistrate, First Class, Bhopal in Cri. Case R.T.No.6765/2012, whereby the applicant has been convicted for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for one year with compensation of Rs.1,75,000/- , with default stipulation.

The facts in short of the case are that the applicant/accused took a loan of Rs.1,50,000/- from the complainant and in lieu of the amount, the applicant/accused given a cheque bearing No.295556 dated 03.05.2012 of Rs.1,50,000/- of Bank of India, which on presentation got dishonoured. The complainant filed a private complaint before the trial Court and the trial Court after appreciation of evidence, convicted the applicant/accused as mentioned hereinabove. The applicant/accused filed an appeal before the Sessions Court and learned Sessions Judge dismissed the appeal and upheld the conviction passed by learned trial Court, hence, this revision.

During the pendency of this Revision, applicant and respondent entered into a compromise and filed an application for

17832/2015 for permission of compromise and for compounding the offence.

On 10.09.2015, respondent Mohammad Samsheer Khan was present in person along with counsel Shri Neeraj Asar and applicant Ajeem Mohammad was also present along with his counsel Shri Jitendra Arya before the Registrar (J-I) and both parties expressed their willingness to resolve the dispute amicably. The parties have entered into compromise voluntarily without any undue influence or coercion. The proceedings of the compromise are also on record.

Today, learned counsel for the parties were present before the Registrar (J-I) and learned counsel for the applicant submitted that the applicant/accused has paid a sum of Rs.22,500/- with the Legal Services Authority, Jabalpur (15% of the Cheque amount of Rs.1,50,000/-) as required in the light of judgments passed by Hon'ble Supreme Court in the cases of **Damodardas S. Prabhu Vs. Sayed Babalal H (2010) 5 SCC 663** and **Madhya Pradesh State legal Services Authority vs. Prateek Jain and others, (2014) 10 SCC 690** and a receipt to this effect has also been submitted.

It is pertinent to mention here that the amount of disputed cheque was Rs.1,50,000/- and dispute between the parties is of private nature and having no direct adverse effect on the society as the nature of offence is personal.

Since the parties had buried the hatchet by amicably settling their disputes, this Court could allow the matter to be compounded. In the totality of the circumstances, I am of the view that the settlement arrived at between the parties in form of compromise petitions is a sensible step that will benefit the

parties, give quietus to the controversy and rehabilitate and normalize the relationship between them.

Dishonour of cheques can be described as a regulatory offence created to serve public interest in ensuring the liability of these instruments. Section 147 of N.I. Act is in the nature of enabling provisions for compounding of the offence under the Negotiable Instruments Act. It is an exception to the general rule incorporating in sub-section (9) of Section 320 of the Criminal Procedure Code.

In the light of aforesaid facts, the compromise appears to be *bona fide* and in the welfare of the parties. So in view of such factum of compromise, this Revision is allowed and impugned judgment dated 07.04.2015 passed by learned 11th Additional Sessions Judge, Bhopal in Criminal Appeal No.668/2014 and 11/06/2014 passed by Judicial Magistrate, First Class, Bhopal in Criminal (complaint) Case R.T.No.6765/2012 are hereby set aside. The applicant is acquitted of the offence punishable under Section 138 of Negotiable Instrument Act. The applicant is on bail, his bail bonds stand discharged.

Let the Courts below be intimated in this regard.

C. C. as per rules.

(SUBHASH KAKADE)
JUDGE