

Criminal Revision
Present: The Hon'ble Justice Ashim Kumar Roy
Judgment On : 21-05-2010.
C.R.R. No. 1343 of 2010
Santanu @ Chottan Mukherjee
versus
The State of West Bengal & Anr.

POINTS

Compounding of offence – Petitioner convicted and sentenced by trial court – High Court affirms the order of the Trial Court – Application by the petitioner to the Trial Judge for compounding of the offence – Petitioner's application before the High Court in the appeal already disposed of – Application for compounding if maintainable – Negotiable Instruments Act 1881, S 138 & 147, Code Of Criminal Procedure, S 320 .

FACTS

Petitioner was convicted under Section 138 of the Negotiable Instruments Act, by the Trial Court and sentenced to simple imprisonment for one month and to pay a sum of Rs. 64,000/- to the complainant by way of compensation. The said order of conviction was challenged in The Sessions Court and the Sessions Court allowed the appeal and set aside the order of conviction and sentence. Against such order of acquittal the complainant preferred an appeal before this Hon'ble Court . This Hon'ble Court by an ex parte Judgement and order set aside the said order of acquittal and restored the order of conviction and sentence passed against the present petitioner by the Trial Court. Thereafter, in connection with the said case the petitioner filed an application under Section 147 of the Negotiable Instruments Act before the Trial Court with a prayer for compounding of the offence on the ground that the compensation amount has been paid to the complainant, but the Trial Court rejected such application on the ground that after the conclusion of the trial the Court has become functus officio. The petitioner then moved an application before this Hon'ble High Court praying for passing necessary order for compounding of the said offence as the matter has been settled out of Court by and between the parties. Hon'ble Court rejected the said application for compounding on two grounds, firstly, the learned advocate appearing on behalf of the complainant disputed the claim

of the petitioner about the payment of compensation amount and secondly, on the ground the High Court after disposal of the appeal has become functus officio and in view of specific bar contained in Section 362 of the Code has no power to make any order for compounding. Now, invoking Section 482 of the Code of Criminal Procedure, the petitioner has once again approached this Court for review of its earlier decision.

HELD :-

According to the provisions of Section 147 of the Negotiable Instruments Act, a special statute, all offences punishable under the said Act are compoundable. Para 3

Negotiable Instruments Act although provides all offences punishable there under are compoundable but being silent as to the procedure for effecting such compounding, the provisions of Code of Criminal Procedure would be applicable. Para 3

Section 320 sub-section (5) of the Code of Criminal Procedure, the composition for offence may be allowed by the Court before whom the appeal is pending, but admittedly in this case no appeal is pending before this Court. Consequently question of consideration of the petitioner's prayer for composition does not at all arise. Para 3

For Petitioner : Mr. Mohan Kumar Putatunda
Mr. Ramen Bose

THE COURT. 1)The present petitioner was convicted under Section 138 of the Negotiable Instruments Act, by the Trial Court and sentenced to suffer simple imprisonment for one month and to pay a sum of Rs. 64,000/- to the complainant by way of compensation. The petitioner challenged the said

order of conviction in an appeal before the Sessions Court. The Sessions Court allowed the appeal and set aside the order of conviction and sentence. Against such order of acquittal the complainant preferred an appeal before this Hon'ble Court being C.R.A. No. 837 of 2006. This Hon'ble Court by an ex parte Judgement and order set aside the said order of acquittal and restored the order of conviction and sentence passed against the present petitioner by the Trial Court. Thereafter, in connection with the said case the petitioner filed an application under Section 147 of the Negotiable Instruments Act before the Trial Court with a prayer for compounding of the offence on the ground that the compensation amount has been paid to the complainant, but the Trial Court rejected such application on the ground that after the conclusion of the trial the Court has become functus officio. The petitioner then moved an application being CRAN No. 2595 of 2009 in connection with C.R.A. No. 837 of 2006 before this Hon'ble High Court praying for passing necessary order for compounding of the said offence as the matter has been settled out of Court by and between the parties. It appears that this Hon'ble Court rejected the said application for compounding on two grounds, firstly, the learned advocate appearing on behalf of the complainant disputed the claim of the petitioner about the payment of compensation amount and secondly, on the ground the High Court after disposal of the appeal has become functus officio and in view of specific bar contained in Section 362 of the Code has no power to make any order for compounding. Now, invoking Section 482 of the Code of Criminal Procedure, the petitioner has once again approached this Court for review of its earlier decision.

2. Heard the learned advocate appearing on behalf of the petitioner. Perused the materials on record as well as the case laws cited by him.

3. According to the provisions of Section 147 of the Negotiable Instruments Act, a special statute, all offences punishable under the said Act are compoundable. However, the said special statute does not lay down its own procedure for compounding of offence, nor excluded the provisions of Section 320 of the Code of Criminal Procedure, which deals with the provisions for compounding the offence. In other words, the special statute, the Negotiable Instruments Act although provides all offences punishable thereunder are compoundable but being silent as to the procedure for effecting such compounding, the provisions of Code of Criminal Procedure would be applicable. Now, in terms of Section 320 sub-section (5) of the Code of Criminal Procedure, the composition for offence may be allowed by

the Court before whom the appeal is pending, but admittedly in this case no appeal is pending before this Court. Consequently question of consideration of the petitioner's prayer for composition does not at all arise. It is also pertinent to note after the disposal of appeal this Hon'ble Court earlier rejected the petitioner's prayer for composition of the offence on the ground of bar contained in Section 362 of the Code of Criminal Procedure.

4. These case laws cited by the learned advocate of the petitioner has no manner of application in the facts and circumstances of the present case.

5. This application has no merit and accordingly stands dismissed.

6. Interim order, if any, stands vacated.

7. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)