

R. RAJESHWARI

v.

H.N. JAGADISH

(Criminal Appeal No. 442 of 2008)

MARCH 5, 2008

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

Negotiable Instruments Act, 1882 – ss.138 and 147 – Dishonour of cheque – Conviction – Before High Court, counsels expressed intention to compromise – Order of High Court in terms of compromise – Application by complainant for recalling the order on premise that she had rejected the proposal made by her lawyer and had instructed him to argue on merits – Maintainability of – Held: Not maintainable as there was no material to show that consent terms filed by counsel were without instruction from complainant – Also no complaint was made by her against lawyer nor was he impleaded as party – In view of specific bar created under s.362 Cr.P.C., ordinarily exercise of jurisdiction under s.482 Cr.P.C. would be unwarranted – Code of Criminal Procedure, 1973 – ss.320, 362 and 482 – Advocates – Compromise – Review.

Compromise/Settlement – Binding effect of – Litigant authorizing the Advocate to enter into settlement – Held: The settlement arrived at is binding on the parties – Plea of complainant that order of trial court was to pay Rs.1.75 lacs to her and therefore matter could not be settled for Rs.1.05 lacs, not tenable as such settlement was permissible in law and not violative of public policy and not otherwise inequitable – Code of Criminal Procedure, 1973 – s.320 – Advocates – Equity.

Code of Criminal Procedure, 1973 – s.362 – Review – Scope of.

The appellant-complainant filed complaint petition against respondent under s.138 of Negotiable Instruments

A Act, 1881 on the allegation of dishonour of cheque amounting Rs. 1 lac. The Magistrate found the respondent-accused guilty for commission of offence punishable under s.138 and sentenced him to undergo simple imprisonment for one month and to pay Rs.2 lacs and in
B default to suffer simple imprisonment for one month. The Magistrate also directed that out of the said amount of compensation, a sum of Rs.1.75 lac would be paid to the appellant. Sessions Judge affirmed the order of
C Magistrate. Respondent filed revision before the High Court. The counsels for the parties expressed their intention to settle the matter. Accordingly parties entered into a compromise. A compromise petition was filed in terms of s.147, wherein the respondent agreed to pay Rs.25000 in addition to the amount of Rs.75,000 already
D deposited in full and final settlement.

On 5.9.2005, the High Court however in the light of the said application and taking into consideration that sum of Rs.75,000 was already deposited directed to pay a further sum of Rs. 30,000 to the appellant and further to
E pay a fine of Rs.5000 to State. The High Court also observed that after the impugned order was passed, Rs.30,000 was paid to the complainant and same was reported by her counsel.

F Appellant moved an application for recalling the order dated 5.9.2005 on the premise that proposal made by her lawyer was expressly rejected by her and that he was instructed to argue on merits.

G On 19.12.2005, the High Court noted that the appellant refused to receive the amount of Rs.30,000/- on the ground that it was meagre. As the appellant refused to receive the amount of Rs.30,000/-, her counsel was directed to pay the amount back to the accused. The accused who was present in person reported receipt of the amount of Rs.30,000/- from the counsel. The accused
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was directed to deposit the said amount in Court. However, by order dated 27.1.2006, the said application was rejected in view of provisions of s.362 Cr.P.C.

In appeal to this Court, complainant-appellant contended that keeping in view the provisions contained in s.4 read with s.320 Cr.P.C., it was evident that no terms of settlement could have been filed before the High Court as express instructions issued in that behalf were not given by the appellant to the lawyer; that the conduct of the lawyer as also the subsequent events would categorically show that the said consent terms were filed by the counsel without any instructions from the appellant; and that when a fraud of this nature is practiced upon the court, the court is not denuded of its power to recall its order despite the bar contained in s.362 Cr.P.C.

Dismissing the appeal, the Court

HELD : 1.1 Indisputably, the provisions of the Code of Criminal Procedure, 1973 would be applicable to the proceedings pending before the courts for trial of offences under the Negotiable Instruments Act. *Stricto sensu*, however, the table appended to s.320 of the Cr.P.C. is not attracted as the provisions mentioned therein refer only to provisions of Indian Penal Code and none other. In such a situation, a settlement could be arrived at by and between the complainant and the accused. While a settlement is arrived at, it is not necessary under the provisions of the Act and/or Code of Criminal Procedure to file any affidavit affirmed by the complainant or the accused. By reason of the authority granted by a litigant in favour of his Advocate which, empowers the latter to enter into a settlement, any settlement arrived at, on behalf of a party to a lis would be binding on the parties thereto. [Paras 12,13] [1074-A, B, C, D]

1.2 The High Court, while disposing of the criminal revision filed by the respondents, passed a judgment

A merely modifying the order passed by the trial court, while
directing the accused to pay a further sum of Rs.30,000/-.
Apart from the sum of Rs.75,000/- deposited by him, he
was directed to pay a fine of Rs.5,000/- to the State. The
order of conviction was not set aside. A judgment of
B conviction and sentence, therefore, was passed against
the respondent. Such a judgment of conviction and
sentence could not have been modified by the High Court
in view of the express bar contained in s.362 Cr.P.C. In
C view of the specific bar created in regard to exercise of
the jurisdiction of the High Court to review its own order,
ordinarily exercise of jurisdiction under s.482 of the Cr.P.C.
would be unwarranted. In some rare cases, the High Court
may do so where a judgment has been obtained from it
by practicing fraud but it does not appear that such a case
D has been made out. Appellant did not make any complaint
against his lawyer. She did not even implead her lawyer
as a party. Verification of such an affidavit affirmed in
support of an application containing serious allegations
against a member of a profession is wholly unwarranted.
E [Paras 14,15] [1075-C, D, E, G, H; 1076-A, C]

*Employees in relation to Mohoharbahal Colliery Calcutta
v. K.N. Mishra & Ors AIR (1975) SC 1632 – referred to.*

1.3. No material has been placed to show that the
allegations made in the said application are correct and/
F or on the basis thereof the court could set the law in
motion and take suo motu action in the matter or direct
initiation of any proceeding against the lawyer concerned.
Furthermore, even before the High Court, the appellant
contended that she was not satisfied with the payment of
G Rs.30,000/- as she was entitled to the interest on the said
sum. The Court, therefore, cannot rule out the possibility
of the appellant's changing her mind after agreeing to the
terms of settlement. Plea of complainant that the order of
trial Court was to pay a sum of Rs.1.75 lacs, therefore, the
H matter could not have been settled for a sum of Rs.1.05

lacs, cannot be accepted. Such settlement was permissible in law. Ex-facie, it does not violate any public policy and not otherwise inequitable. However, the appellant would be at liberty to approach the concerned Bar Council or file an appropriate action against the lawyer concerned. [Paras 16-18] [1076-D-H; 1077-A, B]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 442 of 2008.

From the final Order dated 27.1.2006 of the High Court of Karnataka at Bangalore in I.A. No. 1/05 in CrI. R.P. No. 327/2003.

S.N. Bhat, N.P.S. Panwar and D.P. Chaturvedi for the Appellant.

T.S. Shanthi and P. Narasimhan for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Interpretation of the provisions of Section 147 of the Negotiable Instruments Act, vis-à-vis Section 320 of the Code of Criminal Procedure is involved in this appeal which arises out of judgments and orders dated 5.9.2005 and 27.1.2006 passed by the High Court of Karnataka.

3. The aforementioned orders were passed in the following factual matrix :

4. Appellant filed a complaint petition against the respondent herein, inter alia, alleging that he had advanced a sum of Rs.4,35,000/-. For the purpose of repayment therefor, five cheques were issued. Three cheques were honoured but two were dishonoured. The subject matter of the complaint petition was a cheque issued by the respondent for a sum of Rs.1,00,000/- which was presented to the bank on 15.9.1996. Appellant was informed in regard to the dishonour of the cheque on 28.9.1996.

A The learned Chief Judicial Magistrate, by a judgment and
order dated 1.6.2000, found the respondent guilty for
commission of an offence punishable under Section 138 of the
Negotiable Instruments Act and sentenced him to undergo
simple imprisonment for one month and to pay a fine of
B Rs.2,00,000/- and in default to suffer simple imprisonment for
one month. It was directed that out of the said amount of
compensation, a sum of Rs.1,75,000/- may be paid to the
appellant herein.

C 5. An appeal was preferred thereagainst and by a judgment
and order dated 14.2.2003, the XXIII Addl. City Civil & Sessions
Judge, Bangalore City dismissed the criminal appeal preferred
by the respondent herein, inter alia, holding :

D "I have perused the entire order of the trial Court. That the
trial Court after considering all the evidence and material
placed on record has rightly convicted the accused/
appellant. The accused/ appellant has not made out any
case, so as to interfere with the order of the trial Court.
The order of the trial Court is neither capricious nor mala
E fide. So, I feel it is not necessary to interfere with the order
of the trial Court. The trial Court order deserves to be
confirmed. In view of all the above said discussion, I answer
the point No.1 in the negative."

F 6. A Criminal Revision was filed thereagainst by the
respondent before the High Court. It appears that counsel for
the parties expressed their intention to settle the matter. On a
prayer made in that behalf, the Revision Application was
adjourned.

G 7. The parties allegedly entered into a compromise. A
compromise petition was filed in terms of Section 147 of the
Negotiable Instruments Act, the terms whereof are :

H "1. With intravention of well wishers and friends the
parties to the above case, have decided to settle
their difference amicably.

2. The petitioner agreed to pay the cheque amount sum of Rs.1,00,000/- (Rupees one lakh only) accordingly the petitioner today is paying sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in addition to the amount of Rs.75,000/- (Rupees Seventy Five Thousand only) already deposited in the above case in compliance of the interim order. A B
3. The respondent has agreed not to claim any other amount as determined by the court below and also withdraw his contention and the charges made against the petitioner before the trial court and has no objection to whatsoever to acquit the alleged offences. C
4. The respondent further agreed that he will not making above case against the petitioner in any other case. D
5. The petitioner and respondent set there hands to sought their difference amicably with the above terms and pray this Hon'ble Court pleased to acquit the petitioner as alleged of offences, for the ends of justice." E

8. The High Court, however, in the light of the said application and furthermore taking into consideration that a sum of Rs.75,000/- had already been deposited, directed :

"In the light of the application filed as an amount of Rs.75,000/- was already deposited, it is ordered to pay further sum of Rs.30,000/- to the complainant Smt. R. Rajeshwari and further to pay a fine of Rs.5,000/- to the State. As the matter came to be settled between the parties the sentence to undergo simple imprisonment for a period of one month is hereby set aside by modifying the order of the Trial Court to pay further sum of Rs.30,000/- to the complainant and an amount of Rs.5,000/- to the State as fine. After the impugned order came to be passed, an amount of Rs.30,000/- has been paid to the complainant H

A and the same is reported by the learned Counsel Sri N.R. Naik. The revision petitioner is granted one-week time to deposit the fine amount before the Trial Court.”

B 9. Inter alia, on the premise that such a proposal made by her lawyer to her had expressly been rejected and he was instructed to argue the matter on merit, an application for recall of the said order dated 5.9.2005 was filed. The said application was listed before the learned Judge on 16.12.2005, when it was ordered :

C “Counsel for the Petitioner and the Counsel Sri N.R. Naik for the respondent as well as the counsel for the applicant are present.

D Sri N.R. Naik submits that the amount of Rs.30,000/- reported on 5.9.2005 will be paid before the Court on 19.12.2005.

As request, call on 19.12.2005.”

Proceeding sheet dated 19.12.2005 states :

E “The petitioner-accused Sri H.N. Jagadish is present in person as well as the respondent-complainant Smt. R. Rajeshwari is also present. The learned counsel for Sri N.K. Naik submits that he has brought the amount of Rs.30,000/- which he will pay either to the petitioner or to the respondent as per the directions to the Court.

F The respondent-complainant Smt. R. Rajeshwari refused to receive the amount of Rs.30,000/- on the ground that it is meager and wants the petitioner-accused to pay interest on the said amount.

G As the respondent-complainant Smt. Rajeshwari refused to receive the amount of Rs.30,000/-, the learned counsel Sri N.K. Naik is directed to pay the amount to the petitioner-accused Sri H.N. Jagadish. The Petitioner-accused Shri H.N. Jagadish who is present in person reports receipt of the amount of Rs.30,000/- from Sri N.K.

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Naik.

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As some allegations are made out and also further taking note of the fact that the amount of Rs.30,000/- is repaid to the petitioner-accused, no further order is required. The petitioner-accused is directed to deposit the said amount in Court.

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Post the matter for hearing to consider as to whether the matter which is disposed of, is liable to be recalled or not.

Post after vacation.”

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10. However, by order dated 27.1.2006, the said application was rejected, stating :

“Heard.

IA No.1/05 for recalling the order dated 5.9.2005 is rejected in view of the provision of Section 362 of Cr.P.C.”

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11. Mr. Bhat, learned counsel appearing on behalf of the appellant, submitted that keeping in view the provisions contained in Section 4 read with Section 320 of the Code of Criminal Procedure, it is evident that no terms of settlement could have been filed before the High Court as express instructions issued in that behalf were not given by the appellant to the lawyer. It was urged that the conduct of the lawyer as also the subsequent events would categorically show that the said consent terms were filed by the counsel without any instructions for the appellant.

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It was furthermore submitted that when a fraud of this nature is practiced upon the court, the court is not denuded of its power to recall its order despite the bar contained in Section 362 of the Code of Criminal Procedure.

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12. Negotiable Instruments Act is a special Act. Section 147 of the Act provides for a non obstante clause, stating :

“Section 147 – Offences to be compoundable

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A Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.”

B Indisputably, the provisions of the Code of Criminal Procedure, 1973 would be applicable to the proceedings pending before the courts for trial of offences under the said Act. Stricto sensu, however, the table appended to Section 320 of the Code of Criminal Procedure is not attracted as the provisions mentioned therein refer only to provisions of Indian Penal Code and none other.

C 13. In such a situation, a settlement could be arrived at by and between the complainant and the accused. While a settlement is arrived at, it is not necessary under the provisions of the Act and/or Code of Criminal Procedure to file any affidavit affirmed by the complainant or the accused. By reason of the authority granted by a litigant in favour of his Advocate which, inter alia, empowers the latter to enter into a settlement, any settlement arrived at, on behalf of a party to a lis would be binding on the parties thereto.

E In *Employers in relation to Monoharbahal Colliery Calcutta v. K.N. Mishra & Ors.* [AIR 1975 SC 1632], it has been held by this Court:

F “The next question is whether the compromise is binding on the petitioner. From what has been stated above it would be clear that the petitioner was not averse to the idea of compromise. He only wanted the amount to be paid to him to be raised above four thousand rupees which was originally suggested. It also appears that in pursuance of a stay order passed in this case the petitioner has been receiving half of his wages throughout. He does not specifically deny the receipt of a cheque for Rs.4000/- sent by Mr. Mukherjee. It cannot therefore be accepted that he was under the impression, as he now tries to make out, that what he was receiving was arrears of past wages

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deposited in the Court in compliance with the Court's order. A
The advocate for the appellant had filed the statement of
the case on 13.11.69. The petitioner/respondent had to
file it by 17.12.69 but that was not filed and the appeal
was therefore, set down ex parte against the petitioner/
respondent. In the circumstances and the idea of the B
compromise not being unacceptable to the petitioner it
was the right and indeed the duty of his advocate Mr.
Mukherjee to do the best for his client. We are not able
to see any lack of authority in the action taken by Mr.
Mukherjee. We are of the opinion that there are C
absolutely no merits in this application and it is
dismissed."

14. The High Court, while disposing of the criminal revision
filed by the respondents herein, passed a judgment merely D
modifying the order passed by the learned trial court, while
directing the accused to pay a further sum of Rs.30,000/-. Apart
from the sum of Rs.75,000/- deposited by him, he was directed
to pay a fine of Rs.5,000/- to the State. The order of conviction
was not set aside.

A judgment of conviction and sentence, therefore, was E
passed against the respondent. Such a judgment of conviction
and sentence could not have been modified by the High Court
in view of the express bar contained in Section 362 of the
Criminal Procedure Code which reads thus :

"Section 362 - Court not to alter judgment—Save as F
otherwise provided by this Code or by any other law for
the time being in force, no Court when it has signed its
judgment or final order disposing of a case, shall alter or
review the same except to correct a clerical or arithmetical G
error."

15. In view of the aforementioned specific bar created in
regard to exercise of the jurisdiction of the High Court to review
its own order, we are of the opinion that ordinarily exercise of
jurisdiction under Section 482 of the Code of Criminal H

- A Procedure would be unwarranted. We assume that in some rare cases, the High Court may do so where a judgment has been obtained from it by practicing fraud but it does not appear that such a case has been made out. Appellant did not make any complaint against his lawyer. She did not even implead her lawyer as a party.

The affidavit affirmed in support of the application verified as under :

- C "That the averments made in paragraphs 1 to 8 of the accompanying application are true and correct to the best of my knowledge, belief and information."

Verification of such an affidavit affirmed in support of an application containing serious allegations against a member of a profession is wholly unwarranted.

- D 16. No material has, therefore, been placed before us to show that the allegations made in the said application are correct and/or on the basis thereof the court could set the law in motion and take suo motu action in the matter or direct initiation of any proceeding against the lawyer concerned.

E Furthermore, as has been noticed hereinbefore, even before the High Court, the appellant contended that she was not satisfied with the payment of Rs.30,000/- as she was entitled to the interest on the said sum.

- F The Court, therefore, cannot rule out the possibility of the appellant's changing her mind after agreeing to the terms of settlement.

- G 17. Submission of Mr. Bhat that in a situation of this nature where the complaint was in terms of the order of learned Trial Judge to receive a sum of Rs.1,75,000/-, the matter could not have been settled for a sum of Rs.1,05,000/- cannot be accepted.

- H Why the parties entered into a settlement is not a matter for our consideration. We are merely suggesting that such

settlement was permissible in law. Ex-facie, it does not violate any public policy and not otherwise inequitable. A

18. We are, therefore, of the opinion that no case has been made out for interference with the impugned judgment. The appeal is dismissed accordingly. However, the appellant shall be at liberty to approach the concerned Bar Council or file an appropriate action against the lawyer concerned. B

D.G.

Appeal dismissed.