

Criminal Appeal No. 8333 of 2018

Present : Mr. Justice Md. Badruzzaman

09.09.2019

Mr. Bikash Chandra Saha, Advocate

..... For the convict-appellant

Mr. Md. Sharifuzzaman Majumder, Advocate

....For respondent No.2

This is an application for allowing compromise and disposal of the appeal in terms of compromise.

Mr. Bikash Chandra Saha, learned Advocate appearing for the convict-appellant and Mr. Md. Sharifuzzaman Majumder, learned Advocate appearing for the complainant-respondent submit that during pendency of the instant appeal the dispute between the parties has been resolved out of Court and accordingly, an agreement has been signed/executed by them on 18.11.2018 and according to the terms of the compromise, the complainant-respondent has received 50% of the cheque amount in cash and rest 50% amount, which has been deposited at the time of filing of this appeal, would be withdrawn by the complainant from the court below and accordingly, the learned Advocates submit that for ends of justice, the compromise should be allowed and this appeal should be disposed of in terms of compromise by acquitting the appellant.

I have heard the learned Advocates and perused the records.

Our criminal administration of justice encourages compromise of certain disputes and some of the cases can be compounded as specified in section 345 of the Code of Criminal Procedure at any stage of the proceeding. Sub-sections (5) and (5A) of section 345 of Cr. P.C conferred power upon the Court to allow such compromise at appellate stage and revisional stage respectively. The Supreme Court of India in the case of Bhim Sing and others vs. State of U.P reported in AIR 1974(SC) 1744 granted permission to compound the offence when the appeal was pending before that Court by

special leave. In similar situations, by adopting said decision of the Supreme Court of India our Appellate Division in the case of Md. Joynal and others vs. Md. Rustam Ali Mia and others reported in BCR (1984)(AD) 29 and Abdus Sattar and others vs. The State and another reported in 38 DLR (AD) 38 allowed compromise of the respective offences and acquitted the accused when the appeals were pending before that Court.

In the instant appeal, admittedly, the complainant-respondent filed the original case against the convict-appellant under section 138 of Negotiable Instruments Act, 1881 and upon trial, the trial Court convicted the appellant under the aforesaid section of law and sentenced him to suffer simple imprisonment for 5(five) months with a fine of Tk. 2,42,800/-i.e. the cheque amount. Now question arises whether an offence under Negotiable Instruments Act, 1881 can be allowed to compromise.

The Negotiable Instruments Act, 1881 (shortly N.I. Act) is silent about compromise of offences under the Act. But the Act does not make any provision therein prohibiting such compromise. Be that as it may, since N.I. Act proceeding arises out of monetary transaction and the proceeding is a *quasi* civil and *quasi* criminal in nature and maximum sentence under the law is one year inasmuch as that our criminal administration encourages compromise at any stage of the proceeding as well as at appellate and revisional stage, I am of the view that the dispute between the parties in N.I Act proceeding may be resolved out of Court by the parties on compromise and the same should be allowed by the Court at any stage of the proceeding even at appellate and revisional stage.

Since this matter is pending by way of appeal before this Court, I have no hesitation in allowing the compromise and as a result, this composition shall have the effect of acquittal of the

accused.

Accordingly, the application for compromise is allowed and the appeal is disposed of in terms of the compromise petition. Respondent No.2 will be at liberty to withdraw 50% of the cheque amount from the court below.

The judgment and order of conviction and sentence dated 26.02.2017 passed by the learned Additional Sessions Judge, 7th Court, Dhaka in Metro Sessions Case No. 4016 of 2015 convicting the appellant under section 138 of the Negotiable Instruments Act and sentencing him there under to suffer simple imprisonment for 5(five) months with a fine of Tk. 2,42,800/- is set aside.

The convict appellant is acquitted from the charge leveled against him.

Send down the LCR, if any, to the Courts below with a copy of this order.

(Justice Md. Badruzzaman)