

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No. 1519 of 2007 (O&M)
Date of Decision: 14.10.2015**

Tarun Kumar and another

.....Petitioners

Vs.

Bikram Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Jagdeep Bains, Advocate
for the petitioner.

Mr. Naresh Kaushik, Advocate
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Present criminal revision petition is directed against the impugned judgment dated 11.8.2007 passed by the learned Additional Sessions Judge (Ad hoc), Jalandhar, whereby appeal of the petitioner was dismissed and his conviction recorded vide impugned judgment of conviction dated 7.2.2007 passed by the learned Judicial Magistrate 1st Class, Jalandhar, as well as order of sentence dated 7.2.2007, awarding the sentence of one year RI, was upheld.

Revision petition was admitted vide order dated 23.8.2007.

Thereafter, on 3.10.2007, petitioner made the payment of total

amount, i.e. ₹86,000/- to the respondent. An amount of ₹43,000/- was paid in cash and remaining amount of ₹43,000/- was paid by way of bank draft. Thus, the total cheque amount was paid by the learned counsel for the petitioner to the learned counsel for the respondent and accordingly, statement of learned counsel for the respondent was recorded on 3.10.2007, which is available on record. After recording statement of learned counsel for the respondent, sentence of the petitioner was suspended on 3.10.2007 itself, vide separate order.

So far as facts of the case are concerned, the same are not in dispute. It was a complaint under Section 138 of the Negotiable Instruments Act, 1881, ('NI Act' for short) moved by the complainant-respondent against the present petitioner. The learned trial court convicted the petitioner for an offence under Section 138 of the NI Act, vide impugned judgment of conviction dated 7.2.2007. Accordingly, petitioner-convict was sentenced to undergo rigorous imprisonment for a period of one year and fine of ₹8,00/- was also imposed on him. In default of payment of fine, he was further ordered to undergo rigorous imprisonment for 1 month vide impugned order of sentence dated 7.2.2007. Feeling aggrieved, petitioner filed his appeal which also came to be dismissed by the learned Additional Sessions Judge, vide impugned judgment dated 11.8.2007. Hence this criminal revision petition at the hands of the convict.

As noticed hereinabove, during pendency of the present petition, the cheque amount was paid by the petitioner and it was

duly accepted by the complainant-respondent through his counsel before this Court, without either raising any objection or reserving his right for recovery of any other amount in this regard. In fact, ₹86,000/- was the cheque amount, as recorded by both the learned courts below in para 2 of their respective impugned judgments. Thus, claim of the respondent-complainant stands satisfied.

In view of the above, learned counsel for petitioner submits that offence under Section 138 of the NI Act may be ordered to be compounded and conviction of the petitioner may be set aside, by allowing the present petition.

Faced with the above, when learned counsel for the complainant-respondent was put this specific query as to why the offence be not ordered to be compounded, he had no answer and rightly so, it being a matter of record.

Once the complainant has accepted the agreed amount, i.e. ₹86,000/-, which was the cheque amount and that too, without raising any protest or reserving any right, petitioner deserves compounding of the offence, by invoking the provisions of Section 147 of the NI Act. In fact, as per the provisions contained under Section 147 of the NI Act, offence under Section 138 of the NI Act is compoundable. Further, in view of the scheme of the Act, offence under Section 138 of the NI Act has to be treated as a compoundable, at any stage of the litigation.

In view of what has been discussed hereinabove and respectfully following the law laid down by the Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H, 2010 (5) SC**

663 and Narinder Singh and others Vs. State of Punjab and another, 2014 (6) SCC 466, this Court is of the considered opinion that instant petition deserves to be accepted.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that the petitioner deserves acquittal.

Consequently, the impugned judgments of convictions and order of sentence passed by the learned courts below are hereby set aside. Petitioner is acquitted of the charges framed against him. Since sentence of the petitioner has already been suspended by this Court, his bail bonds/surety bonds shall stand discharged.

Resultantly, with the abovesaid observations made, present criminal revision petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

14.10.2015
Ak Sharma