

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-940-2010 & CRM-801-2015

Date of decision:13.10.2015

Hardarshan Singh Sandhu

...Petitioner

Versus

Mahindra & Mahindra Financial Services Limited through its Head as duly
authorised and constituted attorney

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.P.K.S.Phoolka, Advocate for the petitioner.
Mr.Nitin Thatai, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant criminal revision petition is directed against the impugned judgment dated 15.3.2010 passed by the learned Additional Sessions Judge (Fast Track Court), Bathinda, whereby appeal of the petitioner was dismissed and his conviction recorded vide impugned judgment of conviction and order of sentence of even date, i.e. 8.1.2010 passed by the learned Special Judicial Magistrate 1st Class, Bathinda, was upheld.

Brief facts of the case, as recorded by the learned Additional Sessions Judge, Bathinda, in paras 2 and 3 of the impugned judgment, are that the appellant obtained a loan/finance from respondent company under loan agreement/hire purchase agreement dated 12.6.2002 for purchasing tractor DI-575 and agreed to pay the amount in installments as per agreement dated 12.6.2002, after executing necessary documents. The appellant in discharge of his existing liability towards the respondent, issued

a cheque No.127567 dated 30.7.2004 for an amount of Rs.96,364/-, out of

his account No.8813 maintained with State Bank of Patiala, Malout in favour of the respondent-company. But the cheque was returned dishonoured and unpaid due to insufficiency of funds in the account of the appellant, vide memo dated 4.8.2004. It was further alleged that the legal notice dated 21.8.2004 was issued to the accused, but to no avail.

On the basis of the preliminary evidence, the accused was summoned to face trial for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short). The accused appeared in the court and was released on bail. He was served with the notice under Section 138 of the NI Act, to which the accused pleaded not guilty and claimed trial.

The complainant, with a view to prove its case, examined one witness as CW-1. However, the accused did not lead any evidence in his defence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the complainant-respondent had duly proved its case, bringing home the guilt against the accused. Accordingly, conviction of the accused was recorded for the offence punishable under Section 138 of the NI Act, 1881 and the convict was sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.2,000/-. In default of payment of fine, convict was further ordered to undergo rigorous imprisonment for a period of one month, vide impugned judgment of conviction and order of sentence of even date, i.e. 8.1.2010.

Dissatisfied, the impugned judgment of conviction was challenged by the convict-petitioner, by way of appeal, which also came to be dismissed by the learned Additional Sessions Judge (Fast Track Court),

Bathinda, vide impugned judgment dated 15.3.2010. Hence this criminal revision petition, at the hands of convict.

Notice of motion was issued and thereafter the revision petition was admitted, while suspending the sentence of the petitioner.

During the pendency of the present criminal revision petition, parties arrived at an amicable settlement. Petitioner paid the agreed amount, which was accepted by the complainant-respondent. Accordingly, vide order dated 4.9.2015 passed by this Court, parties were directed to appear before the learned Illaqa Magistrate on or before 11.9.2015 for getting their statements recorded so as to enable the learned Magistrate to record his satisfaction on the genuineness of compromise and thereafter the learned Magistrate was to send his report to this Court, before the next date of hearing.

In compliance of the above-said order dated 4.9.2015 passed by this Court, report dated 25.9.2015 of the learned Judicial Magistrate 1st Class, Bathinda sent through the learned District & Sessions Judge, Bathinda, has been received, which is available on the record of the case. Compromise arrived at between the parties has been found to be a genuine one.

Learned counsel for the parties are *ad idem* that the matter has been amicably settled between the parties.

Learned counsel for the petitioner submits that in view of the amicable settlement arrived at between the parties, let the impugned judgments of conviction be set aside, by allowing the instant petition.

Learned counsel for the respondent-complainant also fairly states that he has got the instructions to say that the complainant-respondent

has got no objection in case the present criminal revision petition is accepted and the petitioner is acquitted of the charges framed against him.

Having heard the learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that keeping in view the above-said changed circumstances of the case and also in view of the law laid down by the Hon'ble Supreme Court in **Damodar S. Prabhu v. Sayed Babalal H. 2010 (5) SCC 663** as well as in **Narinder Singh and others v. State of Punjab, 2014 (6) SCC 466**, instant petition deserves to be accepted. It is so said because under Section 147 of NI Act, every offence punishable under this Act is compoundable and the same can be compounded at any stage of the litigation, including after conviction.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that petitioner deserves to be acquitted of the charges framed against him. Accordingly, petitioner is ordered to be acquitted of the charges framed against him for the offence punishable under Section 138 of the NI Act. His bail/surety bonds shall stand discharged.

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

13.10.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE