

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR No.1280 of 2014(O&M)

Date of Decision:-06.10.2015

Vijay Kumar.

.....Petitioner.

Versus

Ashok Kumar Goel.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Balkar Singh, Advocate for the Petitioner.

Mr. Gaurav Sharma, Advocate for the respondent-complainant.

JASWANT SINGH, J (ORAL)

Present revision is directed against the judgment & order of sentence dated 04.01.2011/06.01.2011 passed by the learned JMIC, Karnal whereby the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo one and a half years of rigorous imprisonment with fine of Rs.3,000/-; further challenge is to the Appellate judgment dated 30.07.2012 passed by the learned Additional Sessions Judge, Karnal whereby the appeal of the petitioner against the order of conviction and sentence dated 04.01.2011/06.01.2011 was dismissed.

Along with the revision an application bearing **CRM No.13124 of 2014** for suspension of remaining sentence and an application bearing

CRM No.27371 of 2014 under Section 147 Cr.PC for compounding of

offence has been filed.

This Court vide order dated 30.07.2014 suspended the sentence of the petitioner during the pendency of the present revision petition.

In brief facts of the case are that in order to discharge his liability petitioner-accused issued cheque in question for a sum of Rs.80,000/- in favour of the respondent-complainant which on presentation was dishonoured for want of "Sufficient Funds". Thereafter the complainant filed complaint under Section 138 of the Negotiable Instruments Act after following the due process of law.

Learned trial court vide judgment and order of sentence dated 04.01.2011/06.01.2011 has convicted the petitioner as aforesaid which was further upheld by the learned Additional Sessions Judge, Amritsar vide order dated 30.07.2012.

Learned counsel for the petitioner states that after the dismissal of the appeal, the parties have arrived at a compromise whereby the petitioner-accused has amicably settled the dispute with the complainant. He accordingly prays for compounding of the offence.

Pursuant to the order dated 19.05.2014 passed by this Court, report dated 08/10.7.2014 from the trial Court has been received wherein it is stated that parties have compromised the matter and complainant has received the amount in question and has no objection if the sentence and conviction of the petitioner-accused Vijay Kumar is set aside.

Learned counsel for the petitioner undertakes to deposit a sum of Rs.12,000/- as costs towards 15% of the cheque amount in the light of the decision of the Hon'ble Supreme Court rendered in **Damodar S. Prabhu Vs. Sayed Babalal H. 2010(2)RCR (Criminal) 851.**

The legal position that the offence under Section 138 of the Act, in view of the provisions of Section 147 of the Act, can be compounded even after the conviction, at the stage of revision is no longer res-integra, Hon'ble Supreme Court in the case of **O.P. Dholkia Vs. State of Haryana & Anr. 2000(1)SCC 762** permitted the compounding of the offence despite conviction and sentence upheld at three stages after the convict had discharged his debt liability to the satisfaction of the complainant. Similar view was reiterated in **Shailesh Shyam Parsekar Vs. Baban @ Vishwanath (2005)4 SCC 162** and **Rama Reddy Vs. Annapurna Seeds & Anr.(2005)10 SCC 632**. Recently, the Hon'ble Supreme Court in **Vinay Devanna Nayak vs. Ryot Seva Sahakari Bank Ltd. 2008(1) RCR (Criminal)** has set aside the conviction and sentence recorded and affirmed upto the High Court and thereby acquitted the offender of the charges levelled against him in view of the matter having been compromised after discharging of the debt liability.

Keeping in view the aforesaid settled legal position and the fact that the petitioner has discharged his entire debt liability to the satisfaction of the complainant, this court is of the opinion that there is no legal impediment in invoking the powers under Section 147 of the Act and compounding the offence.

After hearing counsel for the parties and keeping in view the fact that the complainant has received his amount and has no objection if the petition is allowed and the offence is compounded and sentence is set aside. Accordingly, the petition is allowed and the offence is compounded and sentence is set aside, subject to the petitioner depositing a sum of Rs.12,000/- as costs being 15% of the cheque amount within 30 days from

today i.e. 06.10.2015 before the learned trial Court and the same be forwarded to the concerned legal Aid Authority, failing which the petitioner shall be liable to be re-arrested and the present revision be deemed to be dismissed.

**(JASWANT SINGH)
JUDGE**

October 06, 2015
Vinay