

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.1487 of 2015

Date of Decision: July 02, 2015

Tarlochan Singh son of Late Ujaggar SinghPetitioner

Versus

Malkiat Singh and anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.HS Dhindsa, Advocate for the petitioner.

Mr.Naveen Bawa, Advocate for respondent No.1.

Mr.Mikhail Kad, Assistant Advocate General, Punjab.

<><><>

TEJINDER SINGH DHINDSA, J.

Tarlochan Singh-petitioner was convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹1,000/- for offence under Section 138 of the Negotiable Instruments Act (for short “the Act”) by the Court of learned Judicial Magistrate Ist Class, Amritsar. Appeal preferred stands dismissed vide judgment dated 10.4.2015 passed by the learned Additional Sessions Judge, Amritsar. Resultantly, the present revision petition.

2. Learned counsel appearing for the petitioner/accused as also for the complainant have submitted that a settlement has

been arrived at and as such, compounding of offence as contemplated by Section 147 of the Act has been prayed for. In the light of such submission, it would not be necessary for this Court to delve into the minute facts leading to the institution of the present revision petition. Suffice it to observe that the petitioner herein had issued a cheque dated 5.11.2008 for a sum of ₹80,000/- drawn on State Bank of India, East Mohan Nagar, Amritsar and which upon being presented was dishonoured on the ground of “insufficient funds” vide memo dated 5.2.2009. The complainant had served a legal notice dated 18.2.2009 upon the accused calling upon him to pay the amount. Payment having not been made good, complaint was filed and proceedings under Section 138 of the Act were initiated, which finally culminated in the conviction of the petitioner.

3. It would be apposite to take note that the petitioner in pursuance to the order dated 30.4.2015 passed by this Court has already made a deposit of ₹80,000/- with the Registry by way of demand draft in the name of the complainant/respondent, namely, Malkiat Singh. Upon making such deposit, sentence of the petitioner had been suspended.

4. In terms of the settlement having been arrived at between the parties, the petitioner is ready and willing to make a further payment of ₹40,000/- and which is acceptable to the complainant/respondent.

5. **Section 147** of the Act reads as follows:

“147. Offences to be compoundable – Notwithstanding anything contained in the Code of Criminal Procedure,

1973 (2 of 1974), every offence punishable under this Act shall be compoundable.”

6. Section 147 of the Act is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-Section (9) of Section 320 of the Code of Criminal Procedure which states that “No offence shall be compounded except as provided by this Section.”

7. Compounding of the offence even at the later stages of litigation in cheque bouncing cases has been held to be permissible. In *K.M.Ibrahim v. K.P.Mohammed & Anr., 2009(14) SCALE 262*, the Hon'ble Supreme Court had held as under:

“12. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.”

8. In view of such settled position relating to the compounding of offences under the Act, the prayer raised in the present revision petition for compounding of the offence is accepted.

9. It is directed that the amount of ₹80,000/- already

deposited by the petitioner/accused in the name of the complainant be released to Malkiat Singh/respondent No.1 forthwith. The petitioner would make a further payment of ₹40,000/- to the complainant Malkiat Singh within a period of four weeks from today. Still further, in terms of the guidelines framed by the Hon'ble Supreme Court in *Damodar S. Prabhu v. Sayed Babalal H., 2010 (2) RCR (Criminal) 851*, since the prayer for compounding of the offence has been made in proceedings before this Court in revision, the petitioner-accused shall deposit an amount equivalent to 15% of the cheque amount i.e. ₹12,000/- by way of cost with the Punjab State Legal Services Authority. Even such amount be deposited within a period of four weeks.

10. Accordingly, compounding of the offence is allowed and the conviction of the petitioner is set aside.

11. It is made clear that the benefit of this order shall enure to the petitioner only upon the requisite payment/deposit being made. In the eventuality of the petitioner not complying with the directions contained in this order, he would be liable to be taken in custody to serve out the remaining sentence.

12. Copy of this order be forwarded to the trial Court to ensure compliance.

13. Revision petition disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

July 02, 2015
SRM

Note: Whether to be referred to Reporter? (Yes/No)