IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No.1781 of 2015 (O&M)

Date of Decision: 26.05.2015

Surinder Kumar ... *Petitioner*

Versus

Raj Kumar ... *Respondent*

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

Present:- Mr. V.K. Sandhir, Advocate for the petitioner.

None for the respondent.

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TEJINDER SINGH DHINDSA.J.

Petitioner, Surinder Kumar was convicted under Section 138 of the Negotiable Instruments Act,1881 (hereinafter to be referred to as the Act) and sentenced to undergo RI for a period of one year and to pay a fine of Rs.2000/- in terms of judgment dated 04.11.2011 passed by the Court of learned Judicial Magistrate 1st Class, Ludhiana. Appeal having been preferred, the same has been dismissed vide order dated 06.05.2015 passed by the learned Additional Sessions Judge, Ludhiana.

Resultantly, the present revision petition at the hands of Surinder Kumar.

Mr. V.K. Sandhir, learned counsel appearing for the petitioner at the very outset makes a submission that a settlement had been arrived at with the complainant, namely, Raj Kumar/respondent and prays for compounding of the offence as contemplated under Section 147 of the Act. In the light of such submission having been made, it would not be necessary for this Court to delve into the minute details and facts leading to the institution of the present revision petition. Suffice it to notice that complainant, Raj Kumar had filed a complaint against M/s Rotec Auto International and its partners, namley, Anil Kumar, Surinder Kumar (present petitioner) and Mohan Kumar raising allegations that in the year 2009 accused had taken loan of Rs.10 lacs from the complainant and in discharge of such liability, Mohan Kumar (accused No.4) being the authorized signatory of accused No.1-firm had issued a cheque dated 22.05.2009 for a sum of Rs.10 lacs drawn on Vysya Bank, Gurdev Nagar, Ludhiana and upon presentation of the same, it was received back dishonoured with the remarks "insufficient funds" vide memo dated 11.11.2009. Thereafter, complainant is stated to have got issued a legal notice upon the accused on 16.11.2009 but since the payment was not made good, proceedings under Section 138 of the Act were initiated.

Upon notice having been issued in the instant petition, Mr. Umesh Kumar Kanwar, Advocate has put in appearance on behalf of the complainant, Raj Kumar and concedes that a settlement between the parties has been arrived at and the amount in question already stands paid by the petitioner/accused, Surinder Kumar. Counsel accordingly submits that he would have no objection to the compounding of the offence.

Section 147 of the Act reads as follows:

> ***"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."*

Section 147 of the Act is in the nature of an enabling provision which provides for the compounding of offence prescribed under the same

Act, thereby serving as an exception to the general rule incorporated in Sub Section (9) of Section 320 of the Criminal Procedure Code which states that "No offence shall be compounded except as provided by this Section."

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. Mohammad & another, 2009 (4) Scale 262***, the Hon'ble Supreme Court has observed as under:

> *"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."*

In the light of such settled position in law relating to compounding of offences under the Negotiable Instruments Act, the prayer made by counsel for the petitioner for compounding of offence is accepted.

There is however another aspect which would require to be dealt with. Petitioner, Surinder Kumar has raised the plea for compounding of the offence before this Court in revision. In ***Damodar S. Prabhu v. Sayed Babalal, 2010 (2) RCR (Criminal) 851***, the Hon'ble Supreme Court had framed certain guidelines towards a graded scheme of imposing costs on parties who unduly delay the application seeking compounding of the offence. In terms of such guidelines, it was observed that if the application for compounding of offence under the Act is made before the Sessions Court or High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs and such costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority.

It is not in dispute that in the present case the petitioner has deposited Rs.1 lac on 15.05.2015 towards costs with the Punjab State Legal Services Authority i.e. 10% of the cheque amount. Even the quantum of such costs deposited by the petitioner is being accepted by this Court in the light of submission raised by counsel that the cheque in question had been issued by Mohan Kumar (accused No.4) in his personal capacity and not from the partnership concerned i.e. M/s Rotec Auto International and such issue had been raised before the Lower Appellate Court but no findings in regard thereto had been returned.

For the reasons recorded above, compounding of the offence is allowed and the conviction of the petitioner is set aside.

Revision petition is disposed of in the aforesaid terms.

26.05.2015 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

Note: Whether referred to the Reporter? Yes