

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

CRR-2844 of 2015 (O&M)

Date of decision: October 12, 2015

Ishan Sharma

...Petitioner

Versus

Vikas Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Parshant Bansal, Advocate, for the petitioner.

Mr. Sumit Dua, Advocate for the respondent

Rajan Gupta, J.(oral)

CRM-33176-2015:

This is an application for placing on record affidavit of the respondent. Application is allowed as prayed for. Affidavit is taken on record.

CRR-2844-2015:

This is a revision petition against the conviction of the accused-petitioner under Section 138 of the Negotiable Instruments Act (hereinafter referred to be as “the Act”). The petitioner has been sentenced to undergo rigorous imprisonment for 1½ years and compensation equivalent to half the cheque amount, to defray the amount of cheque and other expenses undertaken by the complainant to prosecute him.

A complaint was filed by the complainant-respondent against the petitioner on the allegations that the petitioner issued a

cheque bearing No.044350 dated 7.6.2011 for Rs.7,50,000/- in favour of the respondent. However, the said cheque was dishonoured with the remarks "*Funds insufficient*". Trial ensued. The petitioner was convicted by the court of Judicial Magistrate 1st Class, Patiala and conviction was upheld by the appellate court.

Today, learned counsel for the respondent has put in appearance. He submits that Vikas Gupta complainant/respondent is present in court and is duly identified by him. According to the counsel, a compromise has been arrived at between the petitioner and the respondent. Learned counsel has placed on record affidavit of the complainant Vikas Gupta, wherein it has been stated that he has compromised the matter with the petitioner and has received the payment in lieu of the cheque from the petitioner and now has no objection if the present petition is disposed of in favour of the petitioner. In the affidavit, he has affirmed the factum of compromise which has been reduced into writing and the same is on record as Annexure P-1 to the revision petition.

In view of the fact that offence under Section 138 of the Act is compoundable under Section 147 of the Act, the statement made by the complainant would amount to withdrawal from prosecution as envisaged by Section 321 Cr.P.C. In such circumstances and in view of the judgment rendered by this court in ***Ritesh Gupta v. State of Punjab and another, 2009 (3) R.C.R. (Criminal) 61***, the plea of the parties is accepted. The conviction and sentence imposed upon the petitioner for

offence punishable under Section 138 of the Act is hereby set-aside and the petitioner is acquitted of the offence for which he was convicted and sentenced.

The revision petition is thus allowed in the aforesaid terms.

October 12, 2015
'Rajpal'

(RAJAN GUPTA)
JUDGE