

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

CRR-3306-2015

Date of decision: 9.12.2015

Amit Arora

...Petitioner

Versus

Amit Chawla

...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.Ranjivan Singh, Advocate for the petitioner.
Mr.Deepak Gupta, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgment of conviction and order of sentence of even date, i.e. 29.1.2015 passed by the learned Sub Divisional Judicial Magistrate, Phillaur as well as the impugned judgment dated 12.8.2015 passed by the learned Additional Sessions Judge, Jalandhar, thereby dismissing the appeal of the petitioner, while upholding his conviction and sentence, convict-petitioner has approached this Court by way of instant criminal revision petition.

Brief facts of case, as noticed by the learned Additional Sessions Judge in his impugned judgment, are that Amit Chawla (respondent herein) filed a complaint under Section 138 of the Negotiable Instrument Act, 1881 ('NI Act' for short), for seeking prosecution of Amit Arora (petitioner herein) on the grounds that the accused-petitioner had borrowed a sum of Rs.2 lacs in cash on 13.10.2013 at Phillaur and had agreed to pay the same within two months. The cheque was presented for

encashment but the same was received back with the remarks funds insufficient. He was served with legal notice directing him to make payment within prescribed time. When the accused failed to make payment, the complaint was filed under Section 138 of NI Act.

Preliminary evidence was led and the court of Ms.Preeti Sukhija, Sub Divisional Judicial Magistrate, Phillaur, summoned the accused under Section 138 of NI Act. The accused did not appear earlier and was declared proclaimed offender. He subsequently appeared and surrendered before the learned trial court and the offence being bailable, was admitted to bail and thereafter notice of accusation was served and tendered his duly sworn affidavit. He also faced cross-examination. Thereafter, the evidence was closed and the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure ('Cr.P.C.' for short), in which the incriminating facts, evidence and documents were put to the accused, in question and answer form, in which he claimed his false implication but did not lead any evidence in his defence.

After hearing the learned counsel for both the parties and going through the record of the case, the learned trial Court came to the conclusion that the complainant has successfully proved his case, bringing home the guilt against the accused. Vide impugned judgment of conviction dated 29.1.2015, accused was held guilty for the commission of offence punishable under Section 138 of NI Act and he was convicted accordingly. Vide impugned order of sentence dated 29.1.2015, convict was awarded the sentence for one year's rigorous imprisonment and Rs.5,000/- was imposed towards compensation. In default of payment of compensation, convict was ordered to undergo rigorous imprisonment for 10 days.

Feeling aggrieved, convict filed his appeal against the above-said impugned judgment of conviction and order of sentence, but his appeal also came to be dismissed by the learned Additional Sessions Judge, Yamuna Nagar, vide impugned judgment dated 12.8.2015. Hence this criminal revision petition.

Notice of motion was issued and to test the bona fide of the petitioner, to make the payment of disputed amount to the complainant-respondent so as to settle the matter amicably, sentence of the petitioner was suspended vide order dated 9.9.2015.

Parties arrived at an amicable settlement. Petitioner claimed to have paid the agreed amount to the complainant-respondent. Thereafter, vide order dated 1.10.2015 passed by this Court, the parties were directed to appear before the learned Illaqa Magistrate on or before 9.10.2015 for getting their statements recorded so as to enable learned Illaqa Magistrate to record his satisfaction on the genuineness of compromise and thereafter the learned Illaqa Magistrate was to send his report to this Court before the next date of hearing.

In compliance of the above-said order dated 1.10.2015, parties appeared before the learned Illaqa Magistrate and got their statements recorded. Report dated 2.11.2015 has been received from the learned Sub Judicial Magistrate, Phillaur, to the effect that compromise arrived at between the parties was found to be genuine, voluntary and without any pressure or coercion.

In view of the above, learned counsel for the parties are ad idem that since parties have amicably settled the dispute and offence under Section 138 of NI Act being compoundable at every stage of the litigation,

present petition deserves to be accepted. They jointly pray for setting aside the impugned judgment of conviction and order of sentence, by allowing the present petition.

After hearing the learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that in the changed circumstances noticed hereinabove, instant petition deserves to be accepted and conviction as well as sentence of the petitioner deserve to be set aside.

It is the settled proposition of law that the offence under Section 138 of NI Act is compoundable. This offence, as per the statutory provision of law contained in NI Act itself, is compoundable at every stage of litigation. The legal position has been set at rest in this regard by the Hon'ble Supreme Court in more than one judicial pronouncements. Once the parties have arrived at an amicable settlement and the complainant has received the agreed amount, conviction and sentence of the petitioner cannot be sustained any further. Petitioner has also shown his bona fide, in compliance of the order dated 9.9.2015 passed by this Court. Compromise arrived at between the parties has been found to be a genuine one.

The above-said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Damodar S. Prabhu v. Sayed Babalal H.**, 2010 (5) SCC 663, **Shiji @ Pappu and others versus Radhika and another**, 2012 (1) RCR (Criminal) 9, **JIK Industries Limited and others v. Amarlal V. Jumanani and another**, 2012 AIR (SC) 1079 and **Madhya Pradesh State Legal Services Authority v. Prateek Jain and another**, 2014 (10) SCC 690 and judgments of this Court in **Sanjay Kumar v. Manmohan Singh**, 2013 (2) AICLR 626 and **Sahib**

Singh Cheema v. Satpal, 2015 (1) AICLR 216.

The relevant observations made by the Hon'ble Supreme Court in para 20 of its judgment in **Prateek Jain's** case (supra), which can be gainfully followed in the present case, read as under:-

*“The purpose of laying down the guidelines in Damodar S. Prabhu (supra) is explained in the said judgment itself. The Court in that case was concerned with the stage of the case when compounding of offence under Section 147 of the Act is to be permitted. To put it otherwise, the question was as to whether such a compounding can be only at the trial court stage or it is permissible even at the appellate stage. It was noted that even before the insertion of Section 147 of the Act, by way of amendment in the year 2002, some High Courts had permitted the compounding of offence contemplated by Section 138 of the Act during the later stages of litigation. This was so done by this Court also in **O.P.Dholakia v. State of Haryana, 2001 (1) R.C.R. (Crl.) 638: (2000) 1 SCC 672** and in some other cases which were noticed by the Bench. From these judgments the Court concluded that the compounding of offence at later stages of litigation in cheque bounding cases was held to be permissible.”*

Reverting to the peculiar fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the cases referred to hereinabove, it is unhesitatingly held that the conviction of the petitioner is liable to be set aside and the present petition deserves to be accepted.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the parties have rightly arrived at an amicable settlement, the present petition deserves to be accepted.

Consequently, the impugned judgment and order of sentence

of even date, i.e. 29.1.2015 passed by the learned Sub Divisional Judicial Magistrate, Phillaur as well as the appellate judgment dated 12.8.2015 passed by the learned Additional Sessions Judge, Jalandhar, are hereby set aside. Bail/surety bonds of the petitioner stand discharged. Petitioner is hereby acquitted of the charges framed against him.

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

9.12.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE