

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.1056 of 2015 (O&M).
Decided on:-28.05.2016.

Poonam.

.....Petitioner.

Versus

State of Punjab and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

None for respondent No.2.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against the judgment dated 16.3.2015 passed by learned Additional Sessions Judge, Amritsar whereby her appeal filed against the judgment of conviction and order of sentence both dated 1.10.2011 passed by learned Judicial Magistrate 1st Class, Amritsar was dismissed with modification in order of sentence.

Briefly stated, the facts of the case are that the respondent No.2-

complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) alleging therein that the petitioner-accused in discharge of her legal liability issued a cheque bearing No.087643 dated 1.10.2005 in the sum of ₹ 4,33,000/- drawn on Syndicate Bank, Amritsar in favour of the respondent No.2-complainant. However, on presentation, the said cheque was dishonoured by the bank and was returned to the complainant along with memo with the remarks "Funds Insufficient". Thereafter, legal notice was issued by the respondent-complainant to the petitioner-accused but she failed to make the payment of cheque amount. As such, the complaint was filed against her.

Learned Magistrate vide judgment dated 1.10.2011 convicted the petitioner for offence punishable under Section 138 of the Act and vide separate order of even date, sentenced her to undergo rigorous imprisonment for a period of two years and to pay fine of ₹ 2,000/- and in default of payment of fine, to further undergo RI for two months.

Feeling aggrieved, the petitioner filed an appeal before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Amritsar vide judgment dated 16.3.2015. However, sentence of the petitioner-accused was ordered to be reduced from two years to one year with no change in the sentence of fine.

It is in these circumstances, the present revision petition has been filed by the petitioner-accused.

Learned counsel for the petitioner has contended that in compliance of order dated 29.4.2016 passed by this Court, the petitioner has deposited the compounding fee of ₹ 43,300/- with the Punjab Legal Services Authority, Chandigarh.

Learned counsel for the petitioner also contends that in view of settlement between the parties, permission to compound the offence may also be granted and the petitioner may be acquitted of the charges framed against her.

I have heard learned counsel for the parties.

The relevant part of order dated 29.4.2016 passed by this Court is reproduced as under:

“Learned counsel for the petitioner states that during the pendency of the present petition, the parties have compromised the matter.

This fact has not been contested by learned counsel appearing for respondent No.2. Apart from admitting the matter being compromised between the parties, Mr. R.S. Bajaj, learned counsel for respondent No.2 has placed on record the affidavit of respondent No.2. Para 3 and 4 of the said affidavit read as under:

'3. That now with the intervention of respectables of the society, matter has been compromised between the parties vide compromise deed dated 27.4.2016. As per the said compromise, the petitioner is to pay to the deponent the sum of

Rs.2,00,000/- (rupees two lacs) as full and final settlement amount.

4. *That in terms of the said compromise, if the petitioner pays to the deponent the said amount of Rs.2,00,000 (Rupees two lacs), deponent will have no objection if the above said revision petition is allowed/disposed of and the petitioner is acquitted/discharge in this case.'*

Learned counsel for the petitioner has handed over a draft bearing No.896773 dated 28.4.2016 amounting to Rs.2,00,000/- in the name of Mr. Parminder Pal Singh, of Oriental Bank of Commerce, as full and final settlement amount, which learned counsel for respondent No.2 has happily accepted. He accepts the compromise in its totality.

Learned counsel for the petitioner states that in terms of order dated 25.3.2015, the petitioner has deposited Rs.4,33,000/- with the Registrar of this Court and since the matter has been compromised between the parties, the said amount be ordered to be refunded to the petitioner. Since learned counsel for respondent No.2 has accepted the draft as total and final payment, the amount of Rs.4,33,000/- deposited by the petitioner deserves to be released in her favour.

Accordingly, the Registrar is directed to release Rs.4,33,000/- to the petitioner.

*Learned counsel for the petitioner states that in terms of judgment passed in **Damodar S. Prabhu Vs. Sayed Babalal H., 2010 (2) RCR (CrL) 851**, the petitioner is ready to deposit the compounding fee. However, he submits that the*

petitioner is a poor lady and in order to get this matter compromised, she arranged the amount on interest.

Accepting the plea of poverty, the requirement of depositing 15% of the compounding fee is reduced to 10%. Accordingly, the petitioner is directed to deposit the compounding fee @ 10% of the cheque amount within 15 days from today.

Adjourned to 28.5.2016.”

The receipt No.921081 dated 12.5.2016 issued by the Member Secretary, Punjab Legal Services Authority, Chandigarh placed on record has been perused. As per the said receipt, the petitioner has deposited ₹ 43,300/- i.e. 10% of the cheque amount, as ordered by this Court on 29.4.2016.

Though none has put in appearance on behalf of the respondent No.2-complainant today in the Court, but perusal of the order dated 29.4.2016 reveals that Mr. R.S. Bajaj, Advocate had put in appearance on that day on behalf of the respondent and filed power of attorney. He also stated that he had no objection in case the complaint is quashed and submitted an affidavit accepting the correctness of compromise.

In view of the above, it is apparent that the matter has been finally settled and the liability is discharged. Since the petitioner has also deposited 10% of the cheque amount with the Punjab State Legal Services Authority, Chandigarh in compliance of order dated 29.4.2016, necessary permission to compound the offence under Section 138 of the Act is granted

and the present revision petition is allowed.

Consequently, the impugned judgment of conviction and order of sentence dated 1.10.2011 passed by learned Magistrate and affirmed by learned appellate Court vide judgment dated 16.3.2015 are set aside and the petitioner is acquitted of the charge levelled against her.

May 28, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE