

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

CRR No. 2577 of 2015

Date of decision : 11.03.2016

Jagdish Singh @ Lahori

....Petitioner

V/s

Urvinder Singh & anr.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. PKS Phoolka, Advocate for the petitioner.

Ms. Rajni Gupta, Addl. A.G. Pb. for respondent no. 2-State.

RAJAN GUPTA J.

Present revision is directed against judgment of conviction of the accused-petitioner under section 138 of the Negotiable Instruments Act, 1885 (hereinafter referred to be as "the Act"). Petitioner has been sentenced to undergo rigorous imprisonment for one year and to pay fine of ₹2,000/- and in default thereof to further undergo rigorous imprisonment for thirty days. Petitioner preferred appeal before Additional Sessions Judge, Bathinda which was dismissed vide judgment dated 04.07.2015. Feeling aggrieved against the judgments of both the courts below, petitioner has approached this court through the instant Criminal Revision.

Brief factual background of the case is that a complaint was filed by the complainant-respondent no. 1 against the petitioner alleging that petitioner took a friendly loan from him with the promise to return the same shortly. In order to discharge his liability, petitioner issued cheque bearing no. 529416 dated 28.05.2009 for ₹85,000/- drawn on Oriental Bank of Commerce

favouring him. The cheque was presented for collection but was returned vide memo dated 29.05.2009 with the remarks 'Insufficient funds'. Thereafter, notice envisaged by the Act was served upon the petitioner. On his failure to pay the amount in question, complaint under section 138 of the Act was instituted. After examining the complaint and preliminary evidence, the Magistrate found that complainant had been able to prove its case against petitioner beyond reasonable doubt. On the basis of the evidence on record, trial court came to the conclusion that ingredients of section 138 of the Negotiable Instruments Act are fulfilled and held petitioner guilty of the charge under section 138 of the Act and sentenced him as already indicated above. The appeal filed against the said judgment was also dismissed by Additional Sessions Judge, Bathinda vide judgment dated 04.07.2015. Vide order dated November 18, 2015, this case was referred to Mediation and Conciliation Centre of this court. The matter was settled before Mediation and Conciliation Centre and settlement was reduced into writing. Learned counsel for the petitioner submits that entire amount as settled before mediation and conciliation centre has been remitted to the complainant and he has no objection if the present petition is disposed of in favour of the petitioner.

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 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 petitioner is accepted. The conviction and sentence imposed upon

the petitioner for offence punishable under Section 138 of the Act is hereby set-aside and he is acquitted of the offence for which he was convicted and sentenced. The revision petition is thus allowed in the aforesaid terms.

March 11, 2016

Ajay

(RAJAN GUPTA)
JUDGE

Referred to the Reporter? Yes