

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

CRR No. 2779 of 2015

Date of decision : 29.03.2016

Updesh Singh

....Petitioner

V/s

State of Haryana & anr.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. P.S. Sullar, Advocate for the petitioner.

Ms. Tanushree DAG Haryana.

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 simple imprisonment for one year by Judicial Magistrate Ist Class, Ambala. Petitioner preferred appeal before Additional Sessions Judge, Ambala which was dismissed vide judgment dated 22.04.2014. 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 loan of ₹2,20,000/- from him for purchase of vehicle with the promise to return the same shortly. In order to discharge his liability, petitioner issued cheque bearing no. 714023 dated 24.10.2008 for ₹1,60,000/- drawn on

Oriental Bank of Commerce, Ambala City favouring him. The cheque was presented for collection but was returned 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 22.04.2014.

In the instant case, complainant failed to appear despite notice. As a result, a report was sought from the Deputy Commissioner, Ambala on 18.01.2016 whether there had been compromise between the parties. Learned State counsel has filed status report by way of affidavit of Pankhuri Kumar, Asstt. Commissioner of Police, Ambala. Same is taken on record. He has referred to para 2 thereof. Same reads as under:-

"2. That in due compliance to the orders of Hon'ble High court local police contracted respondent Prem jee s/o Chhangu Ram and recorded his statement as "that he is resident of given address and financer of vehicles. Updesh Singh S/o Gurtej Singh, H.No. 87, Nasirpur, Ambala had taken loan on 05.11.2004 against Indica Car HR-37 BT-0084 and failed to make payment, so case was filed in court. Now matter has been compromise and Updesh Sigh vide receipt no. 927 dated

25.11.2015 had paid amount of Rs. 1,45,000/-. Now nothing is due against him. Self attested photostat copy of receipt had been handed over to you. Now he does not want to proceed against Updesh Singh. Statement got recorded, read over and signed in English (Prem Chand) 08.02.2016"

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 29, 2016

Ajay

(RAJAN GUPTA)
JUDGE