

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Revision No. 2066 of 2016(O&M)

Date of Decision:-03.08.2016

Rajesh Kumar

...Petitioner

Versus

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr.R.S.Sekhon, Advocate for
Mr.Amit Dhawan, Advocate for the petitioner.

Mr.Sultan Singh Gill, DAG, Punjab.

Mr.Sanjeev Roy, Advocate for
respondent No.2/complainant

HARI PAL VERMA J.(Oral)

The petitioner has filed the present revision petition against the judgment dated 20.05.2016 passed by the learned Addl. Sessions Judge, Jalandhar, whereby his appeal filed against the judgment of conviction and order of sentence both dated 08.12.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar was dismissed.

Briefly stated, the facts of the case are that the accused took a friendly loan of Rs.60,000/- from respondent No.2-complainant and promised to repay the same on demand. In discharge of his legal liability towards the complainant, petitioner/accused issued a cheque bearing No.120797 dated 19.01.2009 for Rs.60,000/- drawn on Union Bank of India, Chogatti, Jalandhar, in favour of respondent No.2/complainant. At the time of issuance of the said cheque, petitioner/accused assured the

respondent No.2/complainant that the said cheque would be honoured as and when presented in the bank. As per assurance of the petitioner/accused, the respondent No.2/complainant presented the said cheque with his bankers but the same was returned unpaid vide memo dated 03.02.2009 with remarks "Funds Insufficient". On 11.02.2009, respondent No.2/complainant issued a legal notice intimating the petitioner/accused regarding dishonour of the cheque and requested him to make the payment within a period of 15 days from the receipt of notice, but petitioner/accused failed to make the payment. As such, the complaint was filed.

Learned Magistrate vide judgement dated 08.12.2015 held the petitioner guilty of offence punishable under Section 138 of the Negotiable Instruments Act (for brevity "the Act") and vide separate order of even date, sentenced him to undergo rigorous imprisonment for a period of one year.

Learned counsel for the petitioner/accused contends that during pendency of the present petition, the petitioner/accused has settled the matter and made the full payment to respondent No.2-complainant.

Learned counsel for the petitioner/accused further submits that in compliance of the order dated 31.05.2016 passed by this Court, he has deposited the compounding fee of Rs.9,000/- vide receipt No.924003 dated 01.08.2016 with the Punjab Legal Services Authority, Chandigarh. He also produced a copy of the said receipt issued by the Member Secretary, Punjab Legal Services Authority, Chandigarh which is taken on record.

Learned counsel for the petitioner/accused also submits that in view of the settlement between the parties, permission to compound the

offence may also be granted and the petitioner may be acquitted of the charges framed.

Learned counsel appearing for respondent No.2/complainant admits the factum of settlement arrived at between the petitioner/accused and respondent No.2/complainant and submits that the entire outstanding amount stands repaid by the petitioner/accused as per the settlement. He further contends that he has no objection in case the offence is compounded or the petitioner is acquitted of charges framed against him.

I have heard learned counsel for the parties and perused the record.

Hon'ble Apex Court in **Damodar S. Prabhu Vs. Sayed Babalal H. 2012(2) RCR (Criminal) 851** has held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. Hon'ble Apex Court laid down the following guidelines for compounding of such like offences:-

“(a) That directions can be given that the Writ of Summons besuitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding maybe allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such

compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.”

Keeping in view the above facts and circumstances, it is apparent that the matter has been finally settled and the liability is discharged. The petitioner has also deposited 15% of the cheque amount Punjab Legal Services Authority, Chandigarh as per the ratio of law laid down by Hon'ble Apex Court in the **Damodar S. Prabhu's case (supra)**, 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 08.12.2015 passed by learned Judicial Magistrate, Jalandhar and affirmed by the learned Appellate Court vide judgment dated 20.05.2016 are set aside and the petitioner is acquitted of the charge levelled against him.

(HARI PAL VERMA)
JUDGE

August 03, 2016
Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No