

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

Criminal Revision No.2145 of 2016 (O&M)

Date of decision: June 3, 2016

Nirmal Singh

...Petitioner

Versus

Surjit Kumar Gogna and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Harkeerat Singh, Advocate for the petitioner.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Nirmal Singh against Surjit Kumar Gogna and another, challenging the impugned judgment of conviction and order of sentence dated 10.01.2014 passed by learned Judicial Magistrate Ist Class, Malerkotla, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of one year and to a fine of Rs.3,000/- for commission of offence punishable under Section 138 of Negotiable Instruments Act and in default of payment of fine to further undergo simple imprisonment for a period of 10 days and also challenging the judgment dated 05.05.2016 passed by learned Addl. Sessions Judge, Sangrur, vide which appeal filed by petitioner was dismissed and the sentence of the petitioner was reduced to rigorous imprisonment for a period of 9 months.

At this stage, learned counsel for the petitioner states that matter has already been compromised between the parties and as per terms of the compromise, the petitioner has already paid the amount of cheque in question to respondent No.1.

He also contends that he does not dispute the concurrent findings of the Courts below regarding conviction and prays for reduction of sentence only.

Notice of motion qua quantum of sentence only.

Mr. Kushagra Mahajan, Advocate has appeared and filed vakalatnama on behalf of respondent No.1. On asking of the Court, Mr. P.S.Grewal, Deputy Advocate General, Punjab, accepts notice on behalf of respondent-State.

Learned counsel for respondent No.1 states that the respondent has received the cheque amount and he has no objection if the offence under Section 138 of Negotiable Instruments Act is compounded in this case.

Heard.

The Hon'ble Supreme Court in case titled **Damodar S.Prabhu versus Sayed Babalal H. 2010 (2) RCR (Criminal) 851** has held that if the application is made before the Sessions Court or High Court in revision or appeal, compounding may be allowed on payment of 15% of the cheque amount.

However, learned counsel for the petitioner submits that the petitioner being a poor person is unable to deposit 15% of the cheque amount as per verdict of the Hon'ble Apex Court in **Damodar S.Prabhu** (supra) and prays for reduction of sentence only.

Keeping in view the facts and circumstances of the present case and the fact that the offence is under Section 138 of Negotiable Instruments Act and in view the compromise arrived at between the parties, the sentence of the present petitioner is reduced to the sentence already undergone by him.

Consequently, this criminal revision petition is partly allowed.

Petitioner Nirmal Singh, who is in custody, be released forthwith if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

June 3, 2016

jasmine

(INDERJIT SINGH)

JUDGE