

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

CRR No.2602 of 2016 (O&M).
Decided on:-07.12.2016.

Vinod Kumar Bansal.

.....Petitioner.

Versus

State of Punjab and another

.....Respondents.

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

Present:- Mr. P.L. Singla, Advocate
for the petitioner.

Mr. Sultan Singh Gill, DAG, Punjab.

Ms. Parveen Dahiya, Advocate
for respondent No.2.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against the judgment dated 20.07.2016 passed by learned Additional Sessions Judge, Fazilka whereby his appeal filed against the judgment of conviction and order of sentence both dated 23.04.2013 passed by learned Sub-Divisional Judicial Magistrate, Abohar, was dismissed.

Briefly stated, the facts of the case are that the respondent-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 his legal liability issued a cheque bearing No.057824 dated 23.01.2010 in the sum of ₹ 2,00,000/- drawn on the HDFC Bank, Branch Ludhiana in favour of the respondent-complainant. However, when

the respondent-complainant presented the said cheque for encashment on 23.01.2010 through her banker Punjab and Sind Bank, Branch Abohar, the same was dishonoured by the bank on the ground of “stop instruct”. On the assurance of petitioner-accused, the respondent-complainant again presented the said cheque on 17.02.2010 for encashment in her bank, but it was again dishonoured on the same ground. Thereafter, legal notice dated 19.02.2010 was issued by the respondent-complainant to the petitioner-accused but the petitioner failed to make the payment. As such, the complaint was filed against him.

Learned Magistrate vide judgment dated 23.04.2013 convicted the petitioner for offence punishable under Section 138 of the Act and vide separate order dated 23.04.2013, sentenced him to undergo rigorous imprisonment for a period of two years with fine of ₹ 10,000/- and in default thereof, to further undergo imprisonment for one month.

Aggrieved against the said judgment and order, the petitioner-accused filed an appeal before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Fazilka vide judgment dated 20.07.2016.

It is in these circumstances, the petitioner has preferred the present revision petition before this Court.

Learned counsel for the petitioner has contended that during pendency of the present revision petition, a compromise has been arrived at between the parties and as per the said compromise, the petitioner has paid

the entire amount of the cheque in question to the respondent by way of two bank drafts bearing Nos.022424 dated 25.07.2016 and 022549 dated 03.08.2016 amounting to Rs.1 lac each issued by the IDBI Bank, Sector 8-C, Chandigarh.

Learned counsel for the petitioner-accused has further submitted that in compliance of order dated October 17, 2016 passed by this Court, the petitioner has deposited the compounding fee of ₹ 30,000/- vide receipt No.924029 dated 07.12.2016 with the Punjab Legal Services Authority, Chandigarh. He has also produced 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 has further submitted that in view of compromise, permission to compound the offence may also be granted. He has further submitted that since the petitioner has cleared all the outstanding amount of the respondent, he may be acquitted of the charges framed against him.

Learned counsel appearing for the respondent-complainant has admitted the factum of compromise arrived at between the petitioner-accused and the respondent-complainant and submitted that the entire outstanding amount stands repaid by the petitioner-accused as per the settlement. He has also submitted 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.

Hon'ble Apex Court in ***Damodar S. Prabhu Versus Sayed Babalal H. 2010(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 be suitably 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 may be 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 with the Punjab State Legal Services Authority, Chandigarh as per the ratio of law laid down by Hon'ble Apex Court in ***Damodar S. Prabhu's case (supra)***.

Therefore, necessary permission to compound the offence under Section 138 of the Act is granted. The impugned judgment of conviction and order of sentence dated 23.04.2013 passed by the trial Court as well as the judgment dated 20.07.2016 passed by learned appellate Court are set aside and the petitioner is acquitted of the charge levelled against him.

Perusal of order of sentence dated 23.04.2013 passed by the trial Court reveals that the petitioner has already paid fine of ₹ 10,000/- imposed upon him. The said amount of fine be refunded to the petitioner as per rules.

Accordingly, the present revision petition stands allowed.

December 07, 2016

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No