

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

Criminal Revision No.472 of 2014

Date of Decision:-11.05.2016

Makhan Singh

...Petitioner

Versus

Parmod Kumar

...Respondent

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

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. A.K. Khunger, Advocate
for the petitioner.

Mr. Gurinderjit Singh, Deputy A.G., Punjab.

Mr. Gurshamshir Singh, Advocate
for the complainant.

HARI PAL VERMA J.(Oral)

Petitioner Makhan Singh son of Nihal Singh has filed the present revision petition against the judgment dated 21.8.2012 passed by the Additional Sessions Judge, Sri Muktsar Sahib whereby, the appeal against the judgment of conviction and order of sentence dated 09.09.2011 passed by the Sub Divisional Judicial Magistrate, Malout, has been dismissed.

Briefly stated that the respondent-complainant has

filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner on the allegation that petitioner has taken an amount of Rs.3,00,000/- from him and in discharge of the debt, has issued the cheque No.982518 dated 21.5.2004 for an amount of Rs.3,00,000/- of the State Bank of India, Malout. The said cheque on presentation, was received back unrealized on the ground of 'Insufficient Funds' vide memo dated 28.6.2004. As required under the Negotiable Instruments Act, a statutory notice dated 29.6.2004 was issued within stipulated period, but after getting no response, the present complaint was filed against the petitioner. The learned Magistrate vide judgment dated 9.9.2011 convicted the petitioner under Section 138 of the Negotiable Instruments Act and vide separate order sentenced him to undergo rigorous imprisonment for a period of two years under Section 138 of the Negotiable Instruments Act and to pay fine of Rs.5,000/-. In default of payment of fine, the petitioner was further ordered to undergo simple imprisonment for a period of three months.

The petitioner preferred appeal against the judgment dated 9.9.2011, however, same was dismissed by learned Additional Sessions Judge vide judgment dated 21.8.2012.

It is in these circumstances, the present revision petition has been filed.

Learned counsel for the petitioner contends that after

dismissal of the appeal, the matter was compromised between the parties and compromise/affidavit dated 13.1.2014 has been made part of the record. As per the affidavit, the complainant has no grudge against the petitioner and does not want to pursue the case against him. He had further stated that he has no objection in case the petitioner-accused is acquitted as the matter has been compromised between them.

On March 19, 2014 this Court had recorded the statement of counsel for the petitioner-accused that in view of law laid down by Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H., 2010 (2) RCR (CrI.) 851**, the petitioner is ready to deposit 15% of the cheque amount before the Legal Services Authority, for which he seeks ten days time.

Considering the aforesaid contention, the petitioner was granted interim bail on furnishing bail bonds/surety bonds to the satisfaction of the Chief Judicial Magistrate, Sri Muktsar Sahib enabling the petitioner to deposit 15% of the cheque amount before the High Court Legal Services Authority within ten days of his release. Learned counsel for the petitioner contends that pursuant to the order dated 19.3.2014, the petitioner has deposited 15% of the cheque amount, which is duly incorporated in the order dated 29.5.2015 passed by this Court. Learned counsel for the petitioner now contends that the requirement as directed in **Damodar S Prabhu's** case (supra) has been fully met

with and the compromise has been arrived at between the parties. Therefore, having recourse to the **Damodar S Prabhu's** case (supra), the present revision petition may be allowed.

Learned counsel for the respondent-complainant submits that the respondent-complainant has received the cheque amount and he has no objection in case the present revision petition is allowed.

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

Hon'ble Apex Court in **Damodar S. Prabhu's** case (supra) 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."

Accordingly, keeping in view the fact that the matter has been finally settled and the liability is discharged; the present revision petition is allowed; judgment of conviction and order of sentence dated 9.9.2011 passed by Sub Divisional Judicial Magistrate, Malout in Criminal Complaint No.222, as well

as judgment dated 21.8.2012 passed in Criminal Appeal No.125 of 2011, by learned Additional Sessions Judge, Sri Muktsar Sahib affirming the conviction of the petitioner-accused, are set aside.

Since the main case is disposed of, the pending applications, if any, are also stands disposed of accordingly.

May 11, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE