

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

CRR No. 356 of 2016 (O&M)

Date of decision : 25.04.2016

Jagjit Singh

....Petitioner

V/s

Sharanpal Singh

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Deepak Aggarwal, Advocate for the petitioner.

Mr. Manav Bajaj, Advocate for the respondent.

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 rigorous imprisonment for one year by Judicial Magistrate Ist Class, Patiala. Petitioner preferred appeal before Additional Sessions Judge, Patiala which was dismissed vide judgment dated 04.12.2015. 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 against the petitioner alleging that petitioner took a loan of ₹3.00 lacs in the month of November 2013 from him with the promise to return the same in the month of January 2014. In order to discharge his liability, petitioner issued two cheques bearing nos. 274417 dated

19.01.2014 for ₹2.00 lacs and 274418 dated 27.01.2014 for ₹1.00 lac drawn on ICICI Bank, Patiala favouring him. First cheque was presented on 19.01.2014 for collection but was returned vide memo dated 22.01.2014 with the remarks 'Funds Insufficient'. When the second cheque was presented on 27.01.2014 for collection, same was also returned vide memo dated 29.01.2014 with the remarks 'Drawer's signatures incomplete'. 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, Patiala vide judgment dated 04.12.2015. On February 19, 2016, a statement was made before this court that parties have entered into a compromise and this court had released the petitioner on interim bail. Learned counsel for the petitioner submits that entire amount has been remitted to the complainant and he has no objection if the present petition is disposed of in favour of the petitioner. Affidavit of respondent to this effect has also been placed on record on 22.04.2016.

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.

April 25, 2016

Ajay

(RAJAN GUPTA)
JUDGE