

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.4724 of 2015 (O&M)

Date of Decision: 03.11.2016

Pritam

...Petitioner(s)

Versus

Ramesh Gupta

...Respondent(s)

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

Present:- Mr. Gobind Sharma, Advocate
for the petitioner.

Mr. Sanjay Jain, Advocate
for the respondent.

HARI PAL VERMA J.

Petitioner - Pritam has filed the present revision petition against judgment dated 1.10.2015 passed by learned Sessions Judge, Ambala, upholding the judgment dated 21.4.2015 passed by Sub Divisional Judicial Magistrate, Naraingarh, whereby the petitioner has been convicted for offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") and vide order dated 23.4.2015 has been sentenced to undergo simple imprisonment for one year with a further direction to pay compensation amounting to Rs.1 lakh along with simple interest at the rate of 8% per annum from the date of filing of the complaint till its realization.

Briefly stated, the facts of the case are that the respondent-complainant was running his business as Commission Agent under the name and style of M/s Bhagwati Enterprises in New Anaj Mandi, Naraingarh, District Ambala. The petitioner-accused used to sell his crops and borrow money for crops through the agency of respondent-complainant. After some time, the petitioner stopped selling his crops through the respondent. At that time, an amount of Rs.1,05,547/- was due towards him. Therefore, in order to discharge his liability, the petitioner issued cheque for an amount of Rs.1 lakh drawn on State Bank of Patiala, Ramgarh, Tehsil Kalka, District Panchkula in favour of the complainant. However, on presentation of the said cheque, the same was dishonoured by the bank with the remarks "insufficient funds". Thereafter, the respondent-complainant sent a legal notice to the petitioner-accused. On 20.7.2011, the petitioner met the respondent and requested him not to file a case against him and assured that he will pay the whole amount upto 6.8.2011, but he failed to keep his promise. As such, the complaint was filed against the petitioner.

Learned Magistrate vide judgment dated 21.4.2015, held the petitioner guilty for offence punishable under Section 138 of the Act and vide separate order dated 23.4.2015, sentenced him to undergo simple imprisonment for one year with a further direction to pay compensation of Rs.1 lakh along with simple interest at the rate of 8% per annum to the respondent-complainant from the date of filing of the complaint till its realization.

Feeling aggrieved, the petitioner filed an appeal before the Court of Session, but the same was also dismissed by learned Sessions Judge, Ambala vide judgment dated 1.10.2015.

It is in these circumstances, the present revision petition has been filed by the petitioner-accused.

On 15.9.2016, this Court has passed the following order:-

“Prayer in this application under Section 482 Cr.P.C. read with Section 147 of the Negotiable Instruments Act is for compounding of offence under Section 138 of the Negotiable Instruments Act.

*Learned counsel for the applicant prays that the applicant is a poor person, therefore, the condition of deposit of 15% of the cheque amount for compounding the offence at the stage of High Court in terms of **Damodar S. Prabhu Vs. Sayed Babalal H., 2010 (2) RCR (Crl.) 851**, be reduced. The financial condition of the applicant-petitioner is not sound. Therefore, some lenient view be taken while fixing the compounding fee.*

Learned counsel for the respondent-complainant states that the complainant has already been paid the cheque amount and the complainant has no outstanding claim against the petitioner.

Accepting the plea of poverty, the requirement of depositing 15% of the compounding fee is reduced to 10%. Accordingly, the application is allowed and the petitioner is permitted to deposit the compounding fee @ 10% of the cheque amount with the Haryana State Legal Services Authority, Chandigarh on or before the next date of hearing.

Adjourned to 3.11.2016.”

Learned counsel for the petitioner states that in compliance of order dated 15.9.2016 of this Court, the petitioner has deposited the compounding fee of Rs.10,000/- with the Haryana State Legal Services Authority, Chandigarh, which is 10% of the cheque amount, in terms of judgment of this Court in **Damodar S. Prabhu v. Sayed Babalal H., 2010(2) RCR (CrL) 851**. He has produced a photocopy of the receipt dated 26.10.2016 which is taken on record.

Learned counsel for the petitioner further contends that in view of settlement between the parties, permission to compound the offence may also be granted and the petitioner may be acquitted of the charges framed against him.

On the other hand, learned counsel for the respondent-complainant fairly admits that the cheque amount has been paid to the complainant and no outstanding amount is pending against the petitioner and therefore, the respondent-complainant has no objection in case the complaint is quashed.

I have heard learned counsel for the parties.

In view of the above, it is apparent that the matter has been finally settled and the liability is discharged. Since the petitioner has also deposited 10% of the cheque amount with the Haryana State Legal Services Authority, Chandigarh in compliance of order dated 15.9.2016, 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 dated 21.4.2015 and order of sentence dated 23.4.2015 passed by learned

Magistrate and judgment dated 1.10.2015 passed by the learned appellate Court are set aside and the petitioner is acquitted of the charge levelled against him.

November 03, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No