

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH.**

CRR-4892 of 2015 (O&M)
Date of decision: June 06, 2016

Kuldeep Sharma

...Petitioner

Versus

Municipal Corporation

..Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. J.S. Dadwal, Advocate for the petitioner.
Ms. Suman Devi, Advocate for
Ms. Deepali Puri, Advocate for the respondent.

Rajan Gupta, J.(oral)

This is a revision petition against the conviction of the accused-petitioner under Section 138 of the Negotiable Instruments Act (hereinafter referred to be as “the Act”). The petitioner has been sentenced to undergo rigorous imprisonment for two years and to pay a compensation of Rs.16.00 lacs to defray the amount of cheque and other expenses undertaken by the complainant to prosecute him.

A complaint was filed by the complainant-respondent against the petitioner on the allegations that the petitioner issued a cheque bearing No.864701 dated 7.2.2007 for Rs.10,11,000/- in favour of the respondent. However, the said cheque was dishonoured with the remarks “insufficient funds”. A trial ensued. The petitioner was convicted by the court of Judicial Magistrate 1st Class, Chandigarh. Petitioner preferred appeal. In appeal, however, sentence of two years was reduced to one year and compensation awarded by the trial court

was also reduced from Rs.16.00 lacs to 10,11,000/-.

On 2.6.2016, Virender Chaudhary, Joint Commissioner-II, Municipal Corporation, Chandigarh had personally appeared before this court and made a statement that Corporation had no objection if offence is compounded. Affidavit to this effect has also been filed which is taken on record as Mark 'A'. Same reads as under:-

“2. That the cheque amount deposited by the petitioner by way of demand drafts bearing No.16663 of Rs.3,00,000/-, 166649 of Rs.3,00,000/-, 213796 of Rs.2,11,000/- and 166642 of Rs.2,00,000/- may be released to the Municipal Corporation, Chandigarh as same are acceptable and the matter be disposed of in terms of the offence having been compounded in terms of Section 147 of the Negotiable Instruments Act, 1881.”

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 such circumstances and 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 parties is accepted. The conviction and sentence imposed upon the petitioner for offence punishable under Section 138 of the Act is hereby set-aside and the petitioner is acquitted of the offence for which he was convicted and sentenced. The amount of drafts deposited with the Registry of this court be released to the respondent. In case same are not valid any longer, petitioner would get the same renewed and deposit them with the

Corporation within ten days of release of the draft to him. In case needful is not done, order of acquittal would be liable to be recalled.

The revision petition is allowed subject to the condition aforesaid. A report regarding compliance of renewal of the demand draft be submitted before this court within one month from today. Registry to apprise the court accordingly.

June 06, 2016
'Rajpal'

(RAJAN GUPTA)
JUDGE