

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.5055 of 2015 (O&M)

Date of Decision: 20.12.2016

Man Singh

...Petitioner(s)

Versus

State of Haryana & another

...Respondent(s)

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

Present:- Mr. Parmod Parmar, Advocate
for the petitioner.

Mr. Arun Kumar, AAG, Haryana.

Mr. Manoj Chahal, Advocate
for respondent no.2.

HARI PAL VERMA J. (Oral)

Petitioner – Man Singh has filed the present revision petition against judgment dated 16.12.2015 passed by learned Additional Sessions Judge, Bhiwani, whereby the appeal filed by the petitioner against the judgment dated 24.5.2013 passed by Sub Divisional Judicial Magistrate, Siwani has been dismissed and the appeal filed by the complainant-Naresh Kumar has been partly allowed.

Briefly stated, the facts of the case are that on account of friendly relations, the petitioner borrowed a sum of Rs.1,20,000/- from the complainant and in discharge of his legal liability, issued a cheque dated

8.10.2009 for a sum of Rs.1,20,000/- in favour of the complainant drawn on Oriental Bank of Commerce, Charkhi Dadri. However, when the said cheque was presented for encashment by the respondent-complainant, the same was dishonoured by the bank with the remarks 'account closed'. Thereafter, the respondent-complainant sent a legal notice dated 31.10.2009 to the petitioner-accused through registered post, but the petitioner refused to accept the same and the same was returned to the counsel for the complainant. As such, the complaint was filed against the petitioner.

Learned Magistrate vide judgment dated 24.5.2013, held the petitioner guilty for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") and vide separate order dated 30.5.2013, sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.1,000/- and in case of default of payment of fine, to undergo further imprisonment for one month.

Aggrieved against the judgment of conviction and sentence, the petitioner as well as the complainant filed their separate appeals before learned Additional Sessions Judge, Bhiwani. Learned lower Appellate Court vide common judgment dated 16.12.2015 dismissed the appeal filed on behalf of the petitioner, whereas, the appeal filed on behalf of the complainant was partly allowed to the extent that the petitioner shall undergo rigorous imprisonment for one year, however, instead of fine, he was directed to payment compensation of Rs.1,20,000/- to the complainant.

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

On 25.2.2016, this Court has passed the following order:-

“Learned counsel for the petitioner contends that during the pendency of the present petition, the matter has been compromised between the parties and claim of the complainant has already been satisfied. He seeks time to deposit the amount with the Legal Services Authority, Haryana in terms of ratio of law laid down in Damodar S. Prabhu Vs. Sayed Babalal H., 2010 (2) RCR (Crl.) 851.

Adjourned to 28.4.2016.

Meanwhile, interim order dated 9.2.2016 to continue till next date of hearing.”

Thereafter, on 22.3.2016, this Court has passed the following order:-

“Prayer in this application is for compounding the offence under Section 138 of the Negotiable Instruments Act, 1881.

*Learned counsel for the applicant-petitioner contends that the applicant-petitioner wants to deposit the statutory amount in terms of ratio of law laid down by Hon’ble Supreme Court in **Damodar S. Prabhu Versus Sayed Babalal H. 2010 (2) RCR (Criminal) 851.** However, he prays that the petitioner is a poor person and taking into consideration his poverty as he is working as a labourer, the compounding fee may be reduced viz. a viz. his financial condition.*

Learned counsel for respondent No.2-complainant does not dispute the fact that the petitioner is a poor man.

Accordingly, statutory compounding fee is reduced from 15% to the extent of 10% of the cheque amount and the petitioner is directed to deposit the same with the Haryana State Legal Services Authority, Chandigarh on or before the next date of hearing i.e. 28.4.2016.

CRM stands disposed of.”

Learned counsel for the petitioner states that in compliance of order dated 22.3.2016 of this Court, the petitioner has deposited the compounding fee of Rs.12,000/- 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.** Photocopy of the receipt dated 21.4.2016 is already 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 charge 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 22.3.2016, the present revision petition is allowed and necessary permission to compound the offence under Section 138 of the Act is granted.

Consequently, the impugned judgments dated 24.5.2013 and 16.12.2015 passed by the Courts below are set aside and the petitioner is acquitted of the charge framed against him.

December 20, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?	Yes / No
Whether reportable?	Yes / No