

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No.415 of 2016 (O&M)

Date of Decision: 17.11.2016

Mohinder Singh

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

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

Present:- Mr. Amit Arora, Advocate for the petitioner.

Mr. Jangsher Singh Bhullar, DAG, Punjab
None for respondent no.2.

HARI PAL VERMA J.

Petitioner – Mohinder Singh has filed the present revision petition against judgment dated 14.1.2016 passed by learned Additional Sessions Judge, Tarn Taran, upholding the judgment and order dated 4.8.2015 passed by Sub Divisional Judicial Magistrate, Khadur Sahib, whereby the petitioner has been convicted for offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the Act”) and has been sentenced to undergo simple imprisonment for one year along with payment of fine of Rs.2,000/-, failing which, he has been ordered to undergo further simple imprisonment for one month.

Briefly stated, the facts of the case are that the respondent-Sakattar Singh has filed a complaint under Section 138 of the Act alleging therein that the petitioner-Mohinder Singh took a loan of Rs.1,60,000/- on 18.10.2010 and a loan of Rs.3,40,000/- on 23.10.2010 from him to be paid after 2/3 days after the sale of his agricultural land. In order to discharge

his said liability, he issued a cheque on 26.10.2010 in favour of Sakattar Singh. However, when the said cheque was presented for encashment, the same was dishonoured with the remarks "Funds Insufficient". Thereafter, the respondent-complainant sent a legal notice dated 2.2.2011 to the petitioner-accused, but to no avail. As such, the complaint was filed against the petitioner.

Learned Magistrate vide judgment dated 4.8.2015, held the petitioner guilty for offence punishable under Section 138 of the Act and sentenced him to undergo simple imprisonment for one year along with payment of fine of Rs.2,000/-, failing which, to undergo further simple imprisonment for one month.

Feeling aggrieved, the petitioner filed an appeal before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Tarn Taran vide judgment dated 14.1.2016.

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

On 18.5.2016, this Court has passed the following order:-

"Learned counsel for the petitioner contends that the petitioner is a poor farmer and has hardly arranged the money so as to discharge his liability and has paid the cheque amount. However, accepting the plea of the petitioner that petitioner is a poor farmer, the requirement of compounding penalty from 15% of the cheque amount is reduced to 10%.

Learned counsel for the petitioner requests for an adjournment to deposit the same.

Adjourned to 25.7.2016."

Learned counsel for the petitioner states that in compliance of order dated 18.5.2016 of this Court, the petitioner has deposited the compounding fee of Rs.50,000/- with the Punjab State Legal Services Authority, Chandigarh vide receipt No.924012 dated 27.9.2016, 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**. The receipt dated 27.9.2016, in original, is already on record.

Learned counsel for the petitioner 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.

No one has put in appearance on behalf of respondent no.2.

Pursuant to order dated 17.2.2016, the parties have also appeared before learned Sub Divisional Judicial Magistrate, Khadur Sahib and got their statements recorded. On the basis of statements of the parties, learned Magistrate has forwarded her report dated 3.3.2016 to the effect that a compromise has been effected between the parties without any pressure or coercion of anyone. The statement of the complainant Sakattar Singh, which has been annexed along with the report of learned Magistrate, reads as under:-

“Stated that I have filed criminal complaint under Section 138 NI Act against Mohinder Singh in this Hon’ble Court. He was convicted in the said complaint by this Hon’ble Court and same order was upheld by Ld. ADJ, Tarn Taran and now he has filed an appeal before the Hon’ble Punjab & Haryana High Court, Chandigarh. Now the compromise has been effected between us and I have received Rs.5 lakhs i.e.

the amount cheque in question from Mohinder Singh in the presence of respectables of village. A writing was also done in respect of said compromise. I have seen the photocopy of compromise and same is Mark-A. I have seen the photocopy of compromise and same is Mark-A. I have no objections, if the present application along with consequential proceedings arising out of said complaint/FIR be quashed.

RO & AC
(Sd/-)

Sd/-
Amandeep Kaur Chahal
SDJM 25.02.2016.”

Learned State counsel has also not disputed the factum of the compromise between the parties.

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 Punjab State Legal Services Authority, Chandigarh in compliance of order dated 18.5.2016, necessary permission to compound the offence under Section 138 of the Act is granted.

Accordingly, the present revision petition is allowed and the impugned judgment of conviction and order of sentence dated 4.8.2015 passed by learned Magistrate and judgment dated 14.1.2016 passed by the learned appellate Court are set aside and the petitioner is acquitted of the charge levelled against him.

November 17, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No