IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.446 of 2016 (O&M).
Decided on:-18.02.2016.

Parkash Kumar.

.........Petitioner.

Versus

State of Punjab and another

.........Respondents.

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

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. R.K. Arya, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. S.S. Kainth, Advocate
for respondent No.2.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against the judgment dated 13.1.2016 passed by learned Additional Sessions Judge, SAS Nagar, Mohali whereby his appeal filed against the judgment of conviction and order of sentence both dated 1.7.2014 passed by learned Judicial Magistrate 1st Class, Dera Bassi was dismissed.

Briefly stated, the facts of the case are that the respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) alleging therein that the petitioner-accused in discharge of his legal liability issued a cheque bearing No.111436 dated 1.11.2009 in the sum of ₹ 2,19,985/- drawn on the HDFC Bank, Sector 35-B, Chandigarh in favour of the respondent-complainant. However, on presentation, the said cheque was dishonoured by the bank vide memo dated 5.4.2010 with the remarks "returned unpaid due to account close". Thereafter, legal notice dated 16.4.2010 was issued by the respondent-complainant to the petitioner-accused but the petitioner failed to make the payment. As such, the complaint was filed against him.

Learned Magistrate vide judgment dated 1.7.2014 convicted the petitioner for offence punishable under Section 138 of the Act and vide separate order of even date, sentenced him to undergo imprisonment for a period of six months and to pay a sum of ₹ 3,30,000/- to the complainant as compensation.

Learned counsel for the petitioner has contended that on 23.1.2016, a settlement has been arrived at between the parties vide compromise deed (Annexure A-1) and and as per the said settlement, the petitioner has paid the entire amount to the respondent.

Learned counsel for the petitioner-accused has submitted that in compliance of order dated February 04, 2016 passed by this Court, he has deposited the compounding fee of ₹ 32,998/- vide receipt No.921038 dated 17.2.2016 with the Punjab Legal Services Authority, Chandigarh. He has also produced copy of the said receipt issued by the Member Secretary, Punjab Legal Services Authority, Chandigarh, which is taken on record.

Learned counsel for the petitioner has further submitted that in view of compromise deed (Annexure A-1), permission to compound the offence may also be granted. Learned counsel has further submitted that since the petitioner has cleared all the outstanding amount of the respondent, he may be acquitted of the charges framed against him.

Learned counsel appearing for the respondent-complainant has admitted the factum of settlement arrived at between the petitioner-accused and the respondent-complainant vide compromise deed (Annexure A-1) and submitted that the entire outstanding amount stands repaid by the petitioner-accused as per the settlement. He has also submitted that he has no objection in case the offence is compounded or the petitioner is acquitted of charges framed against him.

I have heard learned counsel for the parties.

Hon'ble Apex Court in ***Damodar S. Prabhu Versus Sayed Babalal H. 2010(2) RCR (Criminal) 851*** has held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. Hon'ble Apex Court laid down the following guidelines for compounding of such like offences:-

> "*(a)That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is*

made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

Keeping in view the above facts and circumstances, it is apparent that the matter has been finally settled and the liability is discharged. The petitioner has also deposited 15% of the cheque amount with the Punjab State Legal Services Authority, Chandigarh as per the ratio of law laid down by Hon'ble Apex Court in ***Damodar S. Prabhu's case (supra)***, necessary permission to compound the offence under Section 138 of the Act is granted and the present revision petition is allowed. Resultantly, the impugned judgment of conviction and order of sentence dated 1.7.2014 passed by the trial Court and affirmed by learned appellate Court vide judgment dated 13.1.2016 are set aside and the petitioner is acquitted of the charge levelled against him. The petitioner be released from custody forthwith, if not required in any other case.

(HARI PAL VERMA)
JUDGE

February 18, 2016
Yag Dutt