

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-2832 of 2017 (O&M).
Decided on:-04.10.2017.

Davinder Vaid.

.....Petitioner.

Versus

State of Punjab and another

.....Respondents.

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

Present:- Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab
for respondent No.1-State.

Mr. B.R. Rana-I, Advocate
for respondent No.2.

HARI PAL VERMA, J.(ORAL)

CRM-28407-2017

This is an application filed by the applicant-respondent No.2 under Section 482 Cr.PC for placing on record reply to the main petition as well as reply to the CRM No.24483 of 2017 along with Annexure R-1 (colly).

Reply to the main petition as well as reply to the CRM No.24483 of 2017 along with Annexure R-1 (colly) are taken on record subject to all just exceptions.

CRM stands allowed.

CRM-M No.2832 of 2017

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of complaint No.271 dated 09.07.2014 (Annexure P-1) filed by respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act).

Challenge has also been laid to the summoning order dated 10.07.2014 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby the petitioner has been summoned to face trial under Section 138 of the Act.

Learned counsel for the petitioner states that the respondent No.2 has filed a complaint under Section 138 of the Act and in the said complaint, the petitioner was summoned by the trial Court vide order dated 10.07.2014.

He further states that Jatinder Vaid, who is brother of the petitioner, had got registered an FIR No.71 dated 02.07.2015 under Sections 420 and 120-B IPC at Police Station Daresi, District Ludhiana against respondent No.2 Satish Garg and one Naresh Jain, who is proprietor of M/s N.K. Knitwears, 4463, Street No.7, Near Punjab Medicos, New Madhopuri, Ludhiana for harassing and using abusive language and to extend threat to the petitioner. However, during pendency of those proceedings i.e. the complaint under Section 138 of the Act filed by respondent No.2 and the aforesaid FIR registered at the behest of brother of the petitioner, a compromise deed dated 21.08.2015 (Annexure P-4) (colly) was executed between the parties.

Learned counsel for the petitioner contends that respondent No.2 Satish Garg is a signatory to the said compromise deed dated 21.08.2015 and

acting on the said compromise deed, the petitioner and his brother, who is complainant in the aforesaid FIR, did not pursue the said case. Accordingly, the police had filed a cancellation report in the said case. Similarly, as per the said compromise, respondent No.2 was required to withdraw the complaint filed by him under Section 138 of the Act. He has referred to the relevant part of the compromise deed dated 21.08.2015, which reads as under:

“Whereas, now with the intervention of the respectable of the society, the matter has been patched up amicably between the parties on the following terms and conditions:

- 1. That the party of the second part received the cheque amount to his entire satisfaction from the party of the first part and now nothing remains due in between them. The party of the second part undertakes not to claim any money whatsoever in any manner whatsoever from the party of the first part in future qua the cheques mentioned above.*
- 2. That the party of the second part also undertake to withdraw his respective criminal complaints u/s 138 of N.I. Act filed by them against the party of the first part and also undertakes to withdraw the civil suit, if any, filed by him against the party of first part.”*

Learned counsel for the petitioner states that the petitioner and his brother have acted on the said compromise deed duly signed by the respondent No.2 as well as the witnesses thereof, but the respondent No.2 is not acting on the compromise. Therefore, the petitioner was constrained to file the present petition seeking quashing of complaint under Section 138 of the Act and the summoning order. The petitioner has paid all the outstanding

dues, which has duly been reflected/reduced into writing in the compromise deed dated 21.08.2015. In these circumstances, the very continuance of complaint under Section 138 of the Act is nothing but a total abuse of the process of law. The respondent has become dishonest. Therefore, the complaint as well as the subsequent order of summoning are liable to be quashed.

On the other hand, learned counsel for respondent No.2 has argued that no doubt, the compromise deed dated 21.08.2015 was entered between the parties and the respondent No.2 is a signatory of the same, but the said compromise deed was signed in good faith and the amount as claimed in the complaint under Section 138 of the Act had not been paid by the petitioner. Therefore, the present petition deserves to be dismissed and it is for the trial Court to decide whether the amount has been paid or not.

He has further argued that had the amount claimed by the respondent No.2 in the complaint under Section 138 of the Act, been paid by the petitioner, the same would have been entered in the income tax return of the respondent No.2 as well, but no such material has been brought on record to establish the fact that the amount was ever paid to the respondent.

I have heard learned counsel for the parties.

There is no dispute that the compromise deed dated 21.08.2015 was reduced into writing and was signed by both the parties as well as witnesses mentioned therein. Acting on the said compromise deed, the petitioner and his brother did not pursue the FIR No.71 dated 02.07.2015 under Sections 420 and 120-B IPC registered against respondent No.2 and

one Naresh Jain at Police Station Daresi, District Ludhiana, as it was settled in unequivocal terms that respondent No.2 Satish Garg has received the cheque amount to his entire satisfaction from the petitioner and nothing remains due between them. The respondent No.2 had given an undertaking that he will withdraw the complaint under Section 138 of the Act which is recorded in the compromise deed dated 21.08.2015 as well.

Bare perusal of the extract of compromise deed dated 21.08.2015, reproduced hereinabove, leaves no manner of doubt that the respondent No.2 has acted against the compromise deed duly signed by him. The compromise deed is duly signed not only by respondent No.2, but by the other witnesses as well. Therefore, this Court has no hesitation to conclude that the complaint under Section 138 of the Act filed by respondent No.2 deserves to be quashed. While not pursuing the FIR registered against the respondent No.2, the petitioner has acted on the compromise deed and accordingly, the police filed a cancellation report in the FIR.

In the case of ***Ram Lal and others Versus State of Haryana and another 2008(2) RCR (Criminal) 823***, it was held by this Court that when the parties have entered into a compromise, but the complainant has backed out from the same, the FIR is liable to be quashed in such like situation. The relevant paragraph of the said judgment reads as under:

“4. Learned counsel for the petitioners by placing reliance upon the judgment of Hon'ble Supreme Court in the case of Mohd. Shamim v. Smt. Nahid Begum, 2005 (1) RCR (criminal) 697: 2005(1) Apex Criminal 299 (SC) contends that in view of the compromise having been entered into between the parties

and amount having been received by the complainant, the continuation of proceedings is nothing but misuse of the process of the Court. The Hon'ble Supreme Court has been pleased to observe as under:-

14. *This Court in **Ruchi Agarwal vs. Amit Kumar Agrawal & Ors. [2004 (8) Supreme 525]**, in almost a similar situation has quashed a criminal proceeding against the husband, stating : "...Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.*

8. *In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue...."*

Therefore, having regard to the judgment passed in **Ram Lal's case (supra)**, the respondent No.2 has no right to back out from the compromise deed dated 21.08.2015 particularly when he has made a specific averment in the said compromise that he has received the cheque amount to his entire satisfaction and has further made a statement that nothing remains due between the parties and he undertakes to withdraw the complaint filed by him under Section 138 of the Act.

It is on the basis of compromise deed dated 21.08.2015, the petitioner and his brother did not pursue the FIR case and by not coming

forward to honour the compromise, the respondent No.2 intends to take undue benefit without there being any right whatsoever. This conduct on the part of respondent No.2 backing out from the compromise needs to be deprecated.

Accordingly, in the light of the compromise deed dated 21.08.2015 (Annexure P-4) (colly), the complaint No.271 dated 09.07.2014 (Annexure P-1) filed by respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881 and all consequential proceedings arising therefrom are quashed. The summoning order dated 10.07.2014 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby the petitioner has been summoned to face trial under Section 138 of the Act in the aforesaid complaint, is set aside.

The present petition stands allowed in these terms.

October 04, 2017

Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No