

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

CRR-116-2015 (O&M)

Date of decision: - 30.10.2017

Anil Kapoor

.....Petitioner

versus

State of Punjab and another

.....Respondents

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. Manish Bansal, Advocate for the petitioner.

Mr. Sandeep Vermani, Addl. AG, Punjab.

Mr. Achin Gupta, Advocate for respondent No. 2.

ARVIND SINGH SANGWAN, J (ORAL)

Challenge in the present petition is to the judgment of conviction and order of sentence dated 20.8.2014 whereby petitioner has been convicted sentenced to undergo rigorous imprisonment for a period of two years for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and further to the order dated 7.1.2015, passed by the lower Appellate Court, affirming the conviction and sentence awarded by the trial Court.

Learned counsel for the petitioner submits that due to poor financial condition of the petitioner, he could not make payment at the time when the cheque was dishonored. Thereafter, during the pendency of this petition, petitioner paid an amount of ₹ 1,60,000/- on 22.1.2015 to complainant as against the cheque amount of ₹ 1,53,668/-. A perusal of the order dated 22.1.2015 show that as per oral settlement between the parties, it was agreed that total amount of ₹ 2,50,000/- shall be paid to respondent No. 2- Lajpat Rai as full and final

settlement of his claim in lieu of aforesaid cheque amount. Vide order dated 28.5.2015, it was noticed that petitioner could not pay the amount of ₹ 90,000/- in one go, therefore, he sought some time to make the payment. Later on, on three dates, petitioner could not arrange for making payment of ₹ 90,000/-.

A perusal of the order granting extension of time to the petitioner show that respondent No. 2 has shown some sympathy towards the petitioner in allowing him to make payment in installments and did not oppose the prayer for extension of time granted by this Court. On 13.2.2017, wife of the petitioner appeared before the Court and submitted that petitioner is financially not capable to make payment as agreed and the case was then adjourned to 2.3.2017.

On 2.3.2017, it was submitted on behalf of the petitioner that cash amount of ₹ 31,000/- is ready and a demand draft will be submitted on the next date of hearing. On 6.3.2017, demand draft of ₹ 31,000/- was handed over to learned counsel for respondent No. 2 and the same was accepted and for balance payment of ₹ 59,000/-, the case was again adjourned for 10.5.2017. On the said date, wife of the petitioner, brought cash amount of ₹ 10,000/- and the same was accepted by respondent No. 2 as part payment. On the next date of hearing i.e. 13.7.2017, this Court again noticed that though there was a settlement between the parties for payment of ₹ 2,50,000/-, petitioner due to his poor financial condition could not make the payment and the case was adjourned for today for making balance payment of ₹ 49,000/-.

Today, wife of the petitioner is present in Court and submits that she has brought ₹ 19,000/- in cash which she states that has brought it by arranging the same with great difficulties. The said amount of ₹ 19,000/- has been handed

over to learned counsel for respondent No. 2 in Court today and the same has been accepted by him.

Considering the fact that petitioner has a poor financial status and he was not in a position to make payemnt and suffered the conviction of two years under Section 138 of the Negotiable Instruments Act, subsequent thereto, petitioner through his wife has paid the amount of ₹ 2,20,000/- in installments as against the cheque amount of ₹ 1,53,668/-, as agreed orally by the parties, this Court is of the opinion that wife of the petitioner being a lady is not in a position to make further payment to respondent No. 2 and it will be in the interest of justice that amount of ₹ 2,20,000/- already paid to respondent No. 2 be taken as full and final settlement towards the cheque amount of ₹ 1,53,668/-.

In view of above, present petition is disposed of and the sentence awarded by the trial Court vide order dated 20.8.2014 and upheld by the lower Appellate Court vide order dated 7.1.2015 is reduced to as already undergone by the petitioner.

Disposed of as above.

(ARVIND SINGH SANGWAN)
JUDGE

30.10.2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No