

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

**CRR No.4274-2015(O&M)
Date of Decision: 24.04.2017**

Sunil Kumar Sharma

--Petitioner

Versus

State of Punjab & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Gaurav Rana, Advocate for the petitioner.

Mr. P.S. Grewal, DAG, Punjab.

Complainant in person.

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TEJINDER SINGH DHINDSA, J.

CRM-36535-2015:

The instant application has been filed under Section 5 of the Limitation Act for condonation of 444 days delay in filing the accompanying revision petition which is directed against the judgment of conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred to as 'the Act').

Notice in the application was issued by this Court on 05.11.2015.

Service in the case is complete and the complainant-Jasmeen Kaur has appeared in person.

Applicant/petitioner is seeking compounding of the offence in view of the fact that a settlement has been arrived at. Complainant, who is present in Court concedes to the factum of settlement.

In view of the above, prayer made in the application is accepted.

Delay of 444 days in filing the accompanying revision petition is condoned.

Application is disposed of.

CRM-36536 and CRR-4274 of 2015:

The main revision petition is directed against the concurrent conviction of the petitioner for offence punishable under Section 138 of the Act. Petitioner was sentenced to undergo RI for a period of one year. The revision petition is accompanied by an application i.e. CRM-36536-2015 preferred under Section 147 of the Act praying for compounding of the offence.

Counsel for the petitioner makes a submission that a settlement has been arrived at with the complainant/respondent No.2 and the dues as per settlement have already been made over. Counsel prays for compounding of the offence as contemplated under Section 147 of the Act.

Complainant, Jasmeen Kaur is present in Court and has even produced her Indian Union driving license issued by the District Transport Officer, SAS Nagar, Mohali to prove her identity. On a specific query having been put to the complainant, she concedes that dues in pursuance to the settlement having been arrived at have been duly received by her. She does not oppose the prayer advanced on behalf of the petitioner for compounding of the offence.

In the light of such settlement having been arrived at, it would not be necessary for this Court to delve into the minute details and facts leading to the institution of the instant revision petition. Suffice it to notice that a complaint under Section 138 of the Act had been instituted by the complainant/respondent No.2 herein on the allegations that the petitioner/accused had taken a sum of Rs.1.55 lakhs to send her abroad and by arranging the visa and a cheque dated 05.10.2011 for the aforesaid amount drawn on ING Vysya Bank Limited Mohali had been issued. The accused having failed to

sending her abroad, complainant had demanded her money back. On failure of the accused to pay back the money, the cheque was presented and which was dishonoured vide bank memo dated 04.01.2012 with the remarks 'insufficient funds'. A legal notice dated 18.01.2012 was issued by the complainant. The accused having still not paid the money, the complaint and proceedings under Section 138 of the Act were initiated. The trial culminated in the conviction and order of sentence as noticed herein above.

Section 147 of the Act reads as follows:

*“147. **Offences to be compoundable** – Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.”*

Section 147 of the Act is in the nature of an enabling provision which provides for the compounding of offence prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub- section (9) of Section 320 of the Code of Criminal Procedure which states that “No offence shall be compounded except as provided by this Section.”

Compounding of the offence even at the later stages of litigation in cheque bouncing cases has been held to be permissible. In **K.M.Ibrahim v. K.P.Mohammed & Anr., 2009(14) SCALE 262**, the Hon'ble Supreme Court had held as under:

“12. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.”

In view of such settled position relating to the compounding of offences under the Act, the prayer raised in the present revision petition for compounding of the offence is accepted.

Counsel appearing for the petitioner during the course of hearing today has even furnished a receipt dated 20.02.2017 issued by the Secretary, District Legal Services Authority, Mohali reflecting deposit of Rs.23,250/-. Counsel further submits that such amount has been deposited by way of costs i.e. 15% of the cheque amount as per graded scheme/guidelines framed by the Hon'ble Supreme Court of India in **Damodar S. Prabhu Versus Sayed Babalal H., 2010 (2) RCR (Criminal) 851** as the prayer for compounding of the offence has been made at the stage of revision before this Court.

In view of the above, compounding of the offence is allowed and the conviction of the petitioner is set aside.

Since the petitioner stands released on interim bail by virtue of the order dated 05.11.2015 passed by this Court, he would be discharged from the liability of bail bonds furnished.

Revision petition is disposed of accordingly.

24.04.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |