

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.1473 of 2017(O&M)

Date of Decision: May 16, 2017

Jasbir Singh son of Piara SinghPetitioner

Versus

Raj Kumar and anotherRespondents

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

Present: Mr.VPS Mithewal, Advocate for
Mr.Gagandeep Toni, Advocate for the petitioner.

Mr.Deepak Sabherwal, Advocate for respondent
No.1.

Mr.PS Grewal, Deputy Advocate General, Punjab.

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TEJINDER SINGH DHINDSA, J.

CRM No.13363 of 2017

The instant application has been filed under Section 5 of the Limitation Act seeking condonation of delay of 633 days 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 (for short "the Act").

2. Notice in the application was issued on 25.4.2017.
3. Complainant Raj Kumar is represented through Mr.Deepak Sabherwal, Advocate.
4. Prayer in the instant application is not opposed by learned counsel appearing for the complainant. Rather it is

submitted that a settlement has been arrived at between the parties.

5. In view of the above, prayer made in the application is accepted. Delay of 633 days in filing the revision petition is condoned.

Main petition

6. The instant revision is directed against the concurrent conviction of the petitioner under Section 138 of the Act. Petitioner has been sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of ₹1,000/- and in default of payment of fine, to further undergo simple imprisonment for 15 days.

7. Learned counsel appearing for the petitioner, at the very outset, makes a submission that a settlement has been arrived at with the complainant/respondent No.1 and prays for compounding of the offence as contemplated under Section 147 of the Act. In this regard, it is submitted that the cheque amount was of ₹32,000/- and the settlement has been made with the complainant for a sum of ₹65,000/-. The factum of settlement for ₹65,000/- is not disputed by learned counsel representing the complainant/respondent No.1. A demand draft of ₹65,000/- has been handed over to the complainant who is present in Court today.

8. In the light of such settlement having been arrived at, it would not be necessary for this Court to delve into 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 herein, on the allegations that the accused/petitioner towards discharge of a legally enforceable debt had issued a cheque bearing No.417668 dated 29.11.2009 for a sum of ₹32,000/- drawn on Punjab National Bank, Ladhewali Branch, Jalandhar. The cheque having been presented for encashment was received back with the remarks "funds insufficient" by Bank memo dated 12.2.2010. Complainant got the legal notice issued dated 11.3.2010 through registered AD post calling upon the accused to make good the payment within 15 days of the receipt of the notice. The accused-petitioner having not made over the cheque amount led to the filing of the complaint. The trial culminated in the conviction and order of sentence as noticed hereinabove.

9. Mr. Deepak Sabherwal, learned counsel for the complainant submits that since the amount of ₹65,000/- towards full and final settlement between the parties has been received by the complainant, he would have no objection to the prayer of the petitioner seeking compounding of the offence.

10. **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."

11. 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.”

12. 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.”

13. 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.

14. Learned counsel appearing for the petitioner, during the course of hearing today, has even furnished a receipt dated 15.5.2017 issued by the Punjab Legal Services Authority, Chandigarh reflecting deposit of ₹5,000/-. Learned counsel submits that such amount has been deposited by way of costs i.e. 15% of the cheque amount as per the graded scheme/guidelines framed by the Supreme Court in *Damodar S. Prabhu v. 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.

15. In view of the above, compounding of the offence is allowed and the conviction of the petitioner is set aside. Petitioner, who is stated to be in custody, shall be released forthwith upon deposit of fine of ₹1,000/-, if not already deposited.

16. Revision petition is disposed of accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

May 16, 2017

SRM

Note: *Whether speaking/reasoned?* *Yes/No*

Whether Reportable? *Yes/No*