

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR No.2003 of 2017 (O&M)

Date of Decision: 01.06.2017

Shri Kant Arya

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Ashok Kaushik, Advocate for the petitioner.

Mr. C.S. Bakshi, Addl. A.G., Haryana.

Mr. Vikram Singh, Advocate for respondent no.2.
(along with respondent)

TEJINDER SINGH DHINDSA.J

The instant revision petition is directed against the concurrent conviction of the petitioner for offence punishable under Section 138 of Negotiable Instruments Act (hereinafter to be referred as the Act). Sentence imposed upon the petitioner is of 1 year simple imprisonment.

Counsel for the petitioner makes a submission that a settlement has been arrived at with the complainant Laxmi Narain/respondent no.1 for a sum of Rs.70,000/- and such settled amount has been made over to the complainant. Counsel prays for compounding of the offence as contemplated under Section 147 of the Act.

Complainant Laxmi Narain is represented through Mr. Vikram Singh, Advocate and is even present in person. On a specific query having been put, complainant concedes that against the cheque amount of Rs.90,000/- which had led to the institution of proceedings under Section 138 of the Act, a settlement for Rs.70,000/- has been entered into and such payment has already been received by him.

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 filing of the instant revision petition. Suffice it to notice that complainant Laxmi Narain and accused/petitioner Shri Kant Arya were friends and on request of the petitioner, the complainant had lent a sum of Rs.90,000/- on 10.1.2014 in the presence of Sh. Ashwani Gupta. In order to discharge the monetary liability the petitioner had issued a cheque bearing no.52939 dated 23.1.2015 in the sum of Rs.90,000/- in favour of the complainant. The cheque, upon presentation was returned with the remarks "payment stopped" on 28.1.2015. Complainant served upon the accused a legal notice by way of registered post on 25.2.2015. Payment still having not been made good led to the initiation of proceedings under Section 138 of the Act. The trial culminated in the conviction and order of sentence as noticed herein above.

As regards the prayer for compounding of the offence is concerned, Section 147 of the Act reads as follows:-

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"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.

In the light of the graded scheme/guidelines framed by the Hon'ble Supreme Court in ***Damodar S. Prabhu Versus Sayed Babalal H., 2010(2) RCR (Criminal), 851*** the petitioner would be liable to even deposit a sum of Rs.13,500/- with the Secretary, District Legal Services Authority, Rohtak towards costs i.e. 15% of the cheque amount as the prayer for compounding has been raised at the stage of pendency of the revision petition in this Court.

In view of the reasons recorded above, the present petition is allowed. Compounding of the offence is permitted and conviction of the petitioner is set aside.

The petitioner, who is presently in custody would be released upon showing proof of deposit of Rs.13,500/- as costs with the District Legal Services Authority, Rohtak.

Revision petition is disposed of, accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

01.06.2017
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Whether speaking/reasoned: Yes
Whether Reportable: No