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

CRR No.390 of 2017

Date of Decision: 09.03.2017

Kuldeep Singh

.....Petitioner

Vs

Vijay Kumar and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. B.S. Aulakh, Advocate
for the petitioner.

Mr. Anterpreet Singh, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

This is a revision petition arising out of judgment dated 19.01.2017 passed by Additional Sessions Judge, Sri Muktsar Sahib whereby conviction recorded by the trial Court was upheld.

Complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 alleging that the complainant was having good relations with the accused who took loan of Rs.2,50,000/- on 20.10.2013 and promised to repay the same with interest @ 1% per month. In discharge of his legal liability, he issued a cheque amounting to Rs.2,50,000/- drawn on Corporation Bank, Branch Gidderbaha in favour of the

complainant.

It was assured that on presentation, the cheque would be honoured, but on presentation, the cheque was dishonoured and returned with the memo bearing remarks "Funds Insufficient". Thereafter, a legal notice dated 11.01.2014 was served and the complaint came to be filed.

Trial Court recorded the judgment of conviction and order of sentence of the petitioner and the same was upheld by the lower Appellate Court.

In the present revision petition, records were requisitioned on 07.02.2017 and thereafter, CRM No.6848 of 2017 was filed under Section 320(6) Cr.P.C. read with Section 482 Cr.P.C. for compounding of the offence.

Today, complainant Vijay Kumar has appeared through Mr. Anterpreet Singh, Advocate and admitted the factum of compromise (Annexure A-1) attached with the application.

The contents of the compromise dated 18.02.2017 are to the following effect:-

"1. That the 1st party filed a complaint under Section 138 of the N.I. Act, 1881 as amended upto date against the second party and the same was allowed and party no.2 was convicted for One year by both the courts below.

2. That now the second party has filed revision petition against the above said order before the Hon'ble Punjab and Haryana High Court at Chandigarh which is pending for 09-03-2017.

3. That now with the intervention of the respectables persons of the area both the parties have compromise the matter which is beneficial for the both parties and the First Party is also fully satisfied with the compromise.

4. That the compromise between the parties have been arrived at, without any fear or pressure from any quarter.

5. That the first party has no objection if the Revision petition is allowed and the second party/accused party is order to be released or discharged.”

Since the complainant-respondent No.1 has appeared on his own Will, notice of motion be issued to the State of Punjab-respondent No.2.

On the asking of Court, Ms. Rimplejeet Kaur, A.A.G., Punjab accepts notice on behalf of State of Punjab.

Both the contesting parties are ad idem that the compromise has been executed between them without there

being any pressure, threat or undue influence and the same was witnessed by independent witnesses namely Gurtej Singh, Numberdar and Bhola Singh. The compromise would go in a long way to maintain peace and harmony between the parties. Indulgence of this Court is being sought for compounding the offence in terms of Section 147 of Negotiable Instruments Act, 1881 read with Section 320(6) Cr.P.C.

The offence relating to dishonour of cheque is having compensatory profile and it should be given precedence over punitive mechanism. The offence is almost a civil wrong which has been clothed in a criminal overtone. Therefore, priority should be given to compensatory mechanism.

Reliance can be placed on **Kaushalya Devi Massand vs. Roopkishore Khore, 2011 (2) RCR (Criminal) 298** and **Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097**. The revisional jurisdiction of the High Court in terms of Section 401 Cr.P.C. would result in bringing about ends of justice between the parties in the event of finding that the compromise is genuine, bonafide and free from any undue influence.

The compromise in question would serve as a everlasting tool in favour of the parties for which indulgence can be given by this Court. The revisional exercise would also be in

consonance with the spirit of Section 147 of Negotiable Instruments Act.

The principle as laid down in **Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097**, would be squarely fortified if the compromise in question is allowed to be effected between the parties with leave of the Court.

In view of aforesaid, impugned judgment dated 19.01.2017 passed by Additional Sessions Judge, Sri Muktsar Sahib vide which conviction and sentence of the petitioner was upheld stands quashed.

The revision petition is allowed subject to deposit of 15% of the cheque amount as per ratio laid down in **Damodar S. Prabhu's case (supra)** to State Legal Services Authority, failing which this order will be of no consequence. Necessary consequences to follow.

March 09, 2017

jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No