

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.959 of 2017

Date of Decision: March 22, 2017

Shanti Rathee wife of Sh.Jagdish RatheePetitioner

Versus

Santosh Devi and anotherRespondents

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

Present: Mr.SP Chahar, Advocate for the petitioner.

Mr.Chander Shekhar Singhal, Advocate for respondent
No.1.

Mr.Satish Saini, Deputy Advocate General, Haryana.

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TEJINDER SINGH DHINDSA, J.

Petitioner Smt.Shanti Rathee was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act") and sentenced to undergo simple imprisonment for six months and to pay 40% of the cheque amount by way of compensation to the complainant in terms of judgment of conviction and order of sentence dated 19.8.2015 passed by the learned Judicial Magistrate Ist Class, Rohtak.

2. Two appeals arose from the judgment of conviction and order of sentence passed by the trial Court. One appeal was filed by the petitioner herein assailing her conviction and the second appeal was preferred by complainant Smt.Santosh Devi seeking enhancement of sentence as also compensation granted

by the trial Court. Both the appeals have been dismissed vide order dated 13.2.2017 passed by the learned Additional Sessions Judge, Rohtak and thereby affirming the conviction and order of sentence passed by the trial Court.

3. Resultantly, the present revision petition at the hands of Smt.Shanti Rathee.

4. Mr.SP Chahar, learned counsel appearing for the petitioner, at the very outset, makes a submission that a settlement has been arrived at with the complainant, namely, Smt.Santosh Devi/respondent No.1 and prays for compounding of the offence as contemplated under Section 147 of the Act. In the light of such submission having been made, 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 the complainant had filed the complaint raising allegations that a friendly loan for domestic requirements of ₹3,20,000/- had been advanced on 9.2.2013 to the petitioner and which was to be returned in 12 months. To secure such loan, a post-dated cheque dated 12.2.2014 bearing No.431101 drawn on State Bank of Patiala, Kheri Sampla, District Rohtak was issued by the petitioner. The same was presented on 12.2.2014 but was returned unpaid with the remarks "funds insufficient" vide bank cheque return memo dated 21.2.2014. The complainant served a legal notice on 20.3.2014 through registered post, but the petitioner failed to make payment of the cheque and, accordingly, proceedings under Section 138 of the Act were initiated.

5. Upon notice having been issued in the instant petition, Mr.Chander Shekhar Singhal, Advocate has put in appearance on behalf of the complainant and concedes that a full and final settlement for a sum of ₹4,25,000/- has been arrived at and the amount in question already stands paid by the petitioner/accused Smt.Shanti Rathee. Learned counsel, accordingly, submits that he would have no objection to the compounding of the offence.

6. 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."

7. 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."

8. 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.”

9. 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.

10. There is, however, another aspect which would require to be dealt with. Petitioner Shanti Rathee has raised the plea for compounding of the offence before this Court in revision. In ***Damodar S. Prabhu v. Sayed Babalal H., 2010 (2) RCR (Criminal) 851***, the Hon'ble Supreme Court had framed certain guidelines towards a graded scheme of imposing costs on parties who unduly delay the application seeking compounding of the offence. In terms of such guidelines, it was observed that if the application for compounding of the offence under the Act is made before the Sessions Court or High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs and such costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority.

11. As per guidelines laid down by the Apex Court in **Damodar S. Prabhu's** case (supra), petitioner is liable to deposit 15% of the cheque amount i.e. ₹48,000/- towards costs with the Haryana State Legal Services Authority. The same be deposited

forthwith.

12. In view of the above, compounding of the offence is allowed and conviction of the petitioner is set aside. Petitioner, who is stated to be in custody since 13.2.2017 shall be released.

13. It is, however, made clear that the benefit of this order shall enure to the petitioner only upon the prior deposit of costs with the Haryana State Legal Services Authority and as indicated hereinabove.

14. Revision petition is disposed of accordingly.

(TEJINDER SINGH DHINDSA)
JUDGE

March 22, 2017

SRM

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