

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Sr. No.: 225

Criminal Revision No.835 of 2012 (O & M)
Date of Decision : December 20, 2018

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Suresh Kumar

.....Petitioner

Versus

State of Haryana & another

.....Respondents

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CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

. . .

Present: Mr. Kuldeep Khandelwal, Advocate, for the petitioner.

Mr. Munish Sharma, Assistant Advocate General, Haryana.

Mr. C.R. Dahiya, Advocate, for respondent No.2.

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Prayer in this petition is for setting aside judgment of conviction dated 13.02.2011 passed by the Chief Judicial Magistrate, Bhiwani, vide which, petitioner was held guilty of commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act') and order of sentence dated 15.02.2011, whereby petitioner was sentenced to undergo imprisonment for a period of six months for commission of offence under Section 138 of the NI Act and to pay compensation to the tune of Rs.70,000/- to the complainant i.e. M/s Taj Poultry Products, under Section 357 Cr.P.C. The appeal preferred by the petitioner before lower appellate court stands dismissed vide order dated 07.03.2012 while upholding the judgment of conviction and order of sentence.

Vide order dated 19.04.2012, the present revision petition was admitted and it was ordered that in case, half of the cheque amount is deposited within a period of two weeks, sentence of the petitioner shall remain suspended during the pendency of the revision petition. Order dated 19.04.2012 says:

“Criminal Revision No.835 of 2012

Heard.

Revision requires consideration.

Admitted.

Criminal Misc. No.16942 of 2012

Learned counsel for the petitioner submits that the petitioner is ready to deposit half of the amount of the cheque in dispute and the amount shall be subject to the decision of the present revision.

In case, half of the amount of cheque is deposited within a period of 2 weeks, sentence of the petitioner shall remain suspended during the pendency of the revision petition subject to furnishing bonds to the satisfaction of Chief Judicial Magistrate, Bhiwani.”

Perusal of order of dated 10.10.2018 reveals that petitioner was ready to pay the remaining amount. The petition was adjourned from 10.10.2018 to 17.11.2018. On 17.11.2018, following order was passed:-

“Custody certificate filed by learned State counsel is taken on record. Office to tag the same at the appropriate place.

In compliance to the order dated 10.10.2018, learned counsel for the petitioner has produced in Court original demand draft No. 340738 dated 16.11.2018, amounting to Rs. 35,000/- in the name of respondent No. 2. The same is retained on record. Office to tag the same at the appropriate place. Respondent No. 2 through his counsel be informed.

In the interest of justice, adjourned to 03.12.2018.”

Thus, remaining amount of Rs.35,000/- vide draft No.340738 dated 16.11.2018 was presented in court on 17.11.2018 and were received by learned counsel for respondent No.2 (i.e. complainant) on 10.12.2018.

Thus, against the disputed amount, full and final settlement has been made. Counsel for respondent No.2, Mr. C.R. Dahiya, on the instructions from his client states that he has no objection if this Court allows the present revision petition.

Taking into consideration the fact that matter has been amicably settled between the parties and as per judgment of Hon'ble Supreme Court rendered in **Sri Ashish Subba vs. Manoj Kumar Agarwal and another**, 2018(1) RCR (Criminal) 971, the conviction and sentence of the accused under Section 138 of NI Act, can be set aside.

In view of the above, present revision petition is allowed. Judgment of conviction dated 14.02.2011 and order of sentence dated 15.02.2011 passed by the trial court as well as judgment dated 07.03.2012 passed by the lower appellate court are set aside.

December 20, 2018
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(Harnaresh Singh Gill)
Judge

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No