

CRR No. 3841 of 2016

1

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

**CRR No. 3841 of 2016
Date of Decision : 16.05.2018**

Jatin Mahajan

...Petitioner

Versus

Ashwani Mahajan

...Respondent

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. A.P.S. Sandhu, Advocate for the petitioner.

Mr. Joginder Pal Ratra, Advocate for the respondent.

Anupinder Singh Grewal, J.(Oral)

The petitioner has impugned the judgment of conviction and order of sentence dated 02.06.2016 passed by learned Judicial Magistrate Ist Class, Amritsar, whereby he has been convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for a period of two years along with compensation of ₹12,00,000/- as well as judgment dated 29.09.2016 passed by learned Additional Sessions Judge, Amritsar, whereby his appeal thereagainst has been dismissed.

It is stated that the petitioner had issued a cheque for a sum of Rs. 9,50,000/- in favour of the respondent-complainant in discharge of his liability for the purchase of a plot. The cheque upon presentation was dishonoured with the remarks 'Dormant account/signatures differs' on 28.02.2013. Notice in this regard in terms of Section 138 of the Negotiable Instruments Act was issued to the petitioner. On his failure to make the

payment, complaint under Section 138 of the Negotiable Instruments Act was preferred.

Learned counsel for the petitioner has contended that after dismissal of the appeal, the matter has been compromised and the respondent-complainant has been duly compensated including payment of Rs. 9,50,000/-, which was made on 07.10.2016 and the payment was made. He further contends that an amount of Rs. 1,80,000/- had been deposited by the petitioner before the trial Court as a condition for obtaining bail and as per the terms of the compromise, this amount shall be paid to the petitioner.

Learned counsel for the respondent-complainant states that the matter has indeed been compromised and referred to copy of the compromise deed, which has been annexed as Annexure A-1. He states that he is in agreement with the submission of learned counsel for the petitioner that an amount of Rs. 1,80,000/-, which stands deposited in the trial Court, shall be returned to the petitioner.

Learned counsel for the petitioner has relied upon judgments of the Co-ordinate Benches of this Court in the cases of ***Atul Sood and others Vs. Cholamandlam Investment and Finance Company Limited and others***, passed in CRR No. 3704 of 2016, decided on 30.05.2017 and ***Harjeet Singh and another Vs. Amarjit Singh***, 2008(3) RCR(Criminal) 900, wherein in similar circumstances after the matter was compromised, the conviction and sentence awarded by the Courts below were set-aside. Reference has been made to the judgment in the case of ***Vinay Devanna Nayak Vs. Ryot Seva Sahakari Bank Ltd.***, 2008(1) RCR(Criminal) 249, wherein it was held as under :-

"17. As observed by this Court in *Electronic Trade & Technology Development Corporation Ltd. v. Indian Technologists & Engineers*, (1996) 2 SCC 739, the object of bringing *Section 138* in the statute book is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realised this aspect and inserted *Section 147* by the *Negotiable Instruments (Amendment and Miscellaneous Provisions) Act*, 2002. (Act 55 of 2002). The said section reads thus:

S.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.

18. Taking into consideration even the said provision (*Section 147*) and the primary object underlying *Section 138*, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.

19. For the foregoing reasons the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of

conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him.

It has also been held by the Supreme Court in the case of **R. Rajeshwari Vs. H.N. Jagdish**, 2008(2) RCR(Criminal) 171 that although the provisions of Code of Criminal Procedure 1973 would be applicable to proceedings before Courts for trial of offences under said Act. Stricto sensu, however, the table appended to Section 320 Criminal Procedure Code is not attracted as provisions mentioned therein refer only to provisions of Indian Penal Code and none other. Even otherwise, a compromise has been arrived at between the parties, who have agreed to terms and conditions of settlement.

In view of the above, especially, when the settlement has been arrived at between the parties, the petition is allowed and the judgment of conviction and order of sentence dated 02.06.2016 as well as judgment dated 29.09.2016 passed by the Courts below in the case of the petitioner are set-aside and he is acquitted from all charges levelled against him.

However, the petitioner shall remain bound by the terms and conditions of the settlement arrived at between the parties. He shall be allowed to withdraw the amount he has deposited in the trial Court.

May 16, 2018
kanchan

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No