

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.3588 of 2017 (O&M)
DATE OF DECISION:-12.11.2018

MANOHAR LAL

...PETITIONER...

V.

STATE OF PUNJAB AND ANR.

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Parvinder Singh, Advocate for the petitioner.

Mr. Harpreet Multani, AAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Through this revision, the complainant lays challenge to the order dated 16.08.2017 whereby application of the respondent-accused for additional evidence was allowed.

In nutshell, petitioner filed a complaint under Section 138 of the Negotiable Instruments Act (for short "Act") against respondent No.2, in which, vide judgment of conviction and order of sentence dated 04.08.2015, he was held guilty and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.10,000, in default, to further undergo rigorous imprisonment for one month.

Being aggrieved, respondent No.2 approached the first appellate court by way of appeal. During the pendency of said appeal, respondent No.2 entered into a compromise with the petitioner and pursuant to the same, made some part payment. However, he failed to fulfill the terms and conditions of the compromise in entirety, But still, the first appellate

court wrongly allowed the application of respondent No.2 for additional evidence, which he had filed much earlier to the date of compromise.

Learned counsel for the petitioner contends that the first appellate court has failed to appreciate that respondent No.2-accused did not make the complete payment of the settled amount to the petitioner. Despite that, the petitioner has been penalized for no reasons by allowing the application of respondent No.2 for additional evidence. Instead, appellate court ought to have dismissed the appeal of respondent No.2-accused for not adhering to the terms and conditions of the compromise.

On the other hand learned counsel for respondent No.2 pleads no instructions and has also not made any fruitful submission.

After giving anxious consideration to the submissions made by both the sides, this Court finds merit in the instant petition for the reasons to follow:-

After conviction of respondent No.2 vide judgment dated 04.08.2015 and sentencing him to undergo rigorous imprisonment for one year by trial court, respondent No.2 filed an appeal. During the pendency of which, respondent No.2 compromised the matter with the petitioner-complainant in a sum of Rs.2,50,000/-, but did not make the complete payment, despite availing numerous opportunities. Therefore, the first appellate court, instead of allowing the application of respondent No.2 for additional evidence, ought to have dismissed his appeal for want of prosecution and for not adhering to the terms and conditions of the

compromise entered into by him voluntarily with the petitioner-

complainant.

Instead petitioner-complainant has been penalized by the first appellate court, without any fault of his and has rewarded the respondent for not complying with the terms and conditions of the compromise by passing the impugned order dated 16.08.2017, allowing his application.

In view of above factual aspect of the case, the impugned order is completely erroneous and illegal.

Consequently, the petition is accepted and the impugned order dated 16.08.2017, is set aside.

First appellate court is directed to dismiss the appeal of respondent No.2 for want of prosecution and for not fulfilling the terms and conditions of the compromise entered into by him voluntarily with complainant, in case, respondent No.2 does not pay the cheque amount less already paid along with reasonable interest i.e. @ 12% per annum from the date of issuance of cheque till realization, within one month from the date of receipt of certified copy of this order. The alleged compromise between the parties shall have no bearings having been lost its significance, inasmuch as, respondent No.2 himself has violated its terms and conditions by not paying the settled amount.

12.11.2018

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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:
whether reportable:

Yes/No
Yes/No