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

**CRR No. 3693 of 2017
Date of Decision : 08.05.2018**

Jagdish Chand **...Petitioner**

Versus

State of Punjab and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. G.S. Sandhu, Advocate for the petitioner.

Mr. B.P.S. Virk, Advocate for respondent No. 2.

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Anupinder Singh Grewal, J.(Oral)

The petitioner has impugned the judgment of conviction and order of sentence dated 18.12.2015 passed by learned Judicial Magistrate Ist Class, Patiala, whereby he has been convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for a period of 10 months along with compensation of ₹1,00,000/- as well as judgment dated 08.09.2017 passed by learned Additional Sessions Judge, Patiala, whereby his appeal thereagainst has been dismissed.

The petitioner is stated to have approached respondent No. 2-Bank for grant of personal loan of ₹2,50,000/-, which was sanctioned on 22.11.2012 and in the discharge of his liability, petitioner issued a cheque bearing No. 024210 dated 21.11.2014 for ₹2,83,779/-, which was dishonoured upon presentation due to 'Insufficient Funds' on 25.11.2014.

This led to the initiation of proceedings under Section 138 of the Negotiable Instruments Act resulting in the conviction of the petitioner.

Learned counsel for the petitioner has contended that a Co-ordinate Bench of this Court vide order dated 19.12.2017 had sent the matter for mediation. The matter has now been compromised with the respondent No. 2-Bank due to the efforts of Mediation and Conciliation Centre of this Court. The report of the mediator dated 03.04.2018 has been received, wherein, the terms of settlement between the petitioner and the respondent No. 2-Bank have been duly recorded.

Learned counsel for the petitioner and respondent No. 2-Bank are ad-idem that the matter has been compromised and in terms of the settlement, an amount of ₹2,05,250/- was paid by the petitioner to the respondent No. 2-Bank on 30.04.2018 and the outstanding amount of ₹1,05,250/- has to be paid by the petitioner along with interest thereon by November, 2019 and in discharge of this liability, the petitioner has issued post dated cheques.

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 also 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 :-

> *1'7. 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 componding 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.*
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> *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 senso, 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 18.12.2015 as well as judgment dated 08.09.2017 passed by the Courts below in the case of the petitioner are set-aside and he is acquitted from all charges levelled against him.

The petition is disposed of. However, the petitioner shall remain bound by the terms and conditions of the settlement arrived at between the parties.

May 08, 2018 **(ANUPINDER SINGH GREWAL)**
kanchan **JUDGE**

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