

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

236

CRR-1277-2018 (O&M)

Date of Decision:17.09.2018

Bohar Singh

.....Petitioner

Versus

Subash Chander and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Davinder Singh Khurana, Advocate,
for the petitioner.

Mr. Jaswinder Singh, Advocate,
for respondent No.1.

Mr. Rana Harjasdeep Singh, D.A.G., Punjab,
for respondent No.2.

HARI PAL VERMA, J.(Oral)

The petitioner has filed the present revision petition against the judgment dated 09.02.2017 passed by learned Additional Sessions Judge, Fazilka, whereby his appeal filed against the judgment of conviction and order of sentence both dated 14.12.2015 passed by learned sub-Divisional Judicial Magistrate, Jalalabad, was dismissed.

Briefly stated, the facts of the case are that respondent No.1-complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) stating therein that the petitioner-accused in discharge of his legal liability had issued a cheque bearing No.897811 dated 26.07.2013 in the sum of ₹2,00,000/- drawn on Oriental

Bank of Commerce, Jalalabad Branch (W) in favour of respondent No.1-

complainant. However, on presentation, the said cheque was dishonoured by the bank vide memo dated 27.08.2013 with the remarks “insufficient funds”. Thereafter, legal notice dated 06.09.2013 was issued by respondent No.1-complainant to the petitioner-accused, but still the petitioner failed to make the payment. As such, the complaint was filed by the complainant against the petitioner-accused.

Learned Magistrate vide judgment dated 14.12.2015 convicted the petitioner for offence punishable under Section 138 of the Act and vide separate order of even date, sentenced him to undergo imprisonment for a period of two years and to pay fine of ₹10,000/- and in default of payment of fine, to further undergo imprisonment for a period of one month.

Learned counsel for the petitioner has contended that on 26.02.2018, a settlement has been arrived at between the parties vide compromise deed (Annexure P-2) and as per the settlement, the petitioner has paid the entire amount to the respondent. He has further submitted that in compliance of order dated April 06, 2018 passed by this Court, he has deposited 15% of the cheque amount as compounding fee of ₹30,000/- vide receipt No.78 dated 02.08.2018 with the High Court Legal Services Committee, Chandigarh. A photocopy of the receipt dated 02.08.2018 is taken on record.

Thus, counsel has sought permission to compound the offence in view of compromise-deed (Annexure P-2) with a further prayer of acquittal of the charges framed against him as the outstanding amount has been paid to the respondent/complainant.

On the other hand, learned counsel appearing for respondent No.1-complainant has admitted the factum of settlement arrived at between

the petitioner-accused and respondent No.1-complainant vide compromise deed (Annexure P-2) and it is submitted that the entire outstanding amount stands repaid by the petitioner-accused as per the settlement. He has also submitted that he has no objection in case the offence is compounded or the petitioner is acquitted of charges framed against him.

I have heard learned counsel for the parties.

Hon'ble Apex Court in **Damodar S. Prabhu Versus Sayed Babalal H. 2010(2) RCR (Criminal) 851**, has held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. Hon'ble Apex Court laid down the following guidelines for compounding of such like offences:-

“(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a 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.

(d) Finally, if the application for compounding is made

before the Supreme Court, the figure would increase to 20% of the cheque amount.”

Keeping in view the above facts and circumstances, it is apparent that the matter has been finally settled and the liability is discharged. The petitioner has also deposited 15% of the cheque amount with the High Court Legal Services Committee, Chandigarh, as per the ratio of law laid down by Hon'ble Apex Court in **Damodar S. Prabhu's case (supra)**, necessary permission to compound the offence under Section 138 of the Act is granted and the present revision petition is allowed. Resultantly, the impugned judgment of conviction and order of sentence dated 14.12.2015 passed by the trial Court and affirmed by learned appellate Court vide judgment dated 09.02.2017 are set aside and the petitioner is acquitted of the charge levelled against him. The petitioner be released from custody forthwith, if not required in any other case.

September 17, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No