

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

**CRR-1486-2018 (O&M)
Date of decision: May 07, 2018**

Madan Lal

....Petitioner

Versus

Premveer and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

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

None for respondent No.1.

Mr. Ashok Muthreja, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.(ORAL)

Service effected on respondent No.1 but none has put appearance.

On request of learned counsel for the petitioner, main petition is taken on board.

Brief facts of the case are that the petitioner availed friendly loan worth Rs.1,60,000/- from one Premveer-respondent No.1 in the year 2013. To discharge his liability towards the loan amount, he issued cheque bearing No.007547 dated 07.01.2015 amounting to Rs.1,60,000/-, drawn on Oriental Bank of Commerce, Faridabad. However, on presentation, the said cheque was returned unpaid with the remarks 'drawer's signature differs and funds insufficient'. After issuing mandatory notice, the respondent No.1 set the criminal law in motion and ultimately on completion of the trial, the present petitioner was convicted vide judgment dated 07.04.2017 and sentenced to undergo simple imprisonment for a period of six months under Section 138 of Negotiable Instruments Act, 1985 and to pay compensation

to the tune of Rs.2,40,000/- to the complainant-respondent No.1 under Section 143(1) (proviso) of Negotiable Instruments Act read with Section 357(1)(3) of Code of Criminal Procedure within a period of two months from the date of passing of the judgment. The aforesaid judgment of conviction, dated 07.04.2017 and order of conviction dated 12.04.2017 were impugned by the petitioner before the learned Sessions Judge, Faridabad. During the pendency of the appeal before the learned Sessions Judge, Faridabad, the parties entered into a compromise on 05.01.2018, whereby the petitioner agreed to pay Rs.2,40,000/- to the respondent-complainant in three equated installments of Rs.80,000/- each payable on 25.01.2018; 26.02.2018 and 26.03.2018 and in case he failed to make payments, then said appeal was liable to be dismissed. However, the petitioner failed to abide by the aforesaid terms of the compromise. Resultantly, the learned Sessions Judge, Faridabad dismissed the appeal of the petitioner vide impugned judgment dated 26.03.2018 on the ground of failure of the petitioner to make the payment as per the settlement arrived at between the parties.

Now, the petitioner has preferred the instant revision petition impugning the aforesaid judgment dated 26.03.2018, passed by the learned Sessions Judge, Faridabad.

Instant appeal has not been decided on merits rather has been decided on the undertaking of the petitioner by observing as under:-

“Before this Court, parties entered into a compromise on 05.01.2018 as per which appellant-accused agreed to pay Rs.2,40,000/- to the respondent-complainant to settle the matter. He further stated that he will pay the settled amount in three installments i.e. Rs.80,000/- on 25.01.2018, Rs.80,000/- on

26.02.2018 and remaining amount of Rs.80,000/- on 26.03.2018 i.e. today and in case he failed to make payment of the said amount, his appeal be dismissed. Respondent-complainant agreed with the said statement. Separate statements of both the parties were also recorded to this effect. The matter was then adjourned to 25.01.2018 for payment of the first installment on which date appellant-accused failed to appear. Accordingly his bail was cancelled and bonds were forfeited to the State. Warrants of arrest against the appellant-accused and notice to his surety were ordered to be issued. Appellant-accused has been produced in custody today.

As already observed, today appellant-accused has made a statement that he cannot make payment as per settlement effected between the parties.

As per the statement made by the appellant-accused on 05.01.2018, in case of his failure to abide by the settlement between the parties, he will have no objection dismiss the appeal. In view of the said statement of the appellant and in view of his failure to make the payment, present appeal is hereby dismissed as he is bound by the impugned judgment of conviction recorded by learned trial Court and order or sentence. Appellant-accused be taken into custody in this case. His jail warrants be prepared. Appeal file be consigned to records. Trial Court record be sent back along-with a copy of this order.”

It is apparent that the appeal has not been decided on merits rather on the basis of non-compliance of settlement. If the compromise not acted upon then there is no ground to dismiss the appeal and even then it should be decided on merits.

In this view of the matter, this court is of the considered view that impugned order dated 26.03.2018 passed by learned Sessions Judge, Faridabad suffers from illegality, infirmity and the same is not sustainable in the eyes of law. Resultantly, the same is hereby *set aside* and the learned Sessions Judge, Faridabad is directed to decide the appeal afresh on merits.

Parties are directed to appear before the learned Sessions Judge on 02.07.2018.

In the meanwhile, petitioner shall be released on bail to the satisfaction of the learned Sessions Judge, Faridabad.

With the aforesaid directions, the present petition is disposed of accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

May 07, 2018
m. sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No