

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No.4782 of 2017 (O&M)

Date of Decision: 19.09.2018

Anil Kumar

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

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

Present:- Mr. Vipul Sharma, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Respondent no.2 in person.

HARI PAL VERMA J.

Petitioner – Anil Kumar has filed the present revision petition impugning the judgment dated 03.11.2017 passed by learned Additional Sessions Judge, SAS Nagar, Mohali, whereby his appeal against the judgment of conviction and order of sentence dated 12.02.2016 passed by Judicial Magistrate Ist Class, SAS Nagar, Mohali, was dismissed.

Brief facts of the case are that as per the family settlement/agreement dated 11.11.2011, the respondent-accused issued three post dated cheques for a total amount of Rs.34,00,000/- in favour of the respondent no.2-complainant towards her 1/3rd share in a house. He had made a promise that he will pay the aforesaid amount of Rs.34 lakhs to the complainant in cash on or before 30.06.2012 and get back the said cheques from her. The family settlement was executed between the parties. The

respondent-accused paid an amount of Rs.10 lakhs in cash to the complainant on 29.06.2012 and issued another cheque of Rs.1 lakh after taking back one cheque of Rs.11 lakhs from her. But thereafter, he failed to pay the remaining of the amount i.e. Rs.23 lakhs to her. Accordingly, respondent no.2-complainant presented the remaining cheques for encashment, but the same were dishonoured due to insufficiency of funds. Accordingly, legal notice dated 22.10.2012 was issued to the respondent-accused requesting him to make payment of Rs.23 lakhs, but the said legal notice was returned back. Hence, the complaint in question was filed.

Learned Magistrate vide judgment of conviction and order of sentence dated 12.02.2016 convicted the petitioner for offence under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.5,000/-, failing which, he was ordered to undergo further simple imprisonment for one week.

Aggrieved against the judgment of conviction and order of sentence, the petitioner filed an appeal before the Court of Session, but the same was also dismissed by learned Sessions Judge, SAS Nagar, Mohali vide judgment dated 03.11.2017.

It is in these circumstances, the present revision petition has been filed by the petitioner-accused.

On 19.12.2017, when this matter came up for hearing before this Court, following order was passed:-

“The learned senior counsel for revisionist, on instructions from daughter of revisionist, states that revisionist is ready to pay the entire cheque amount with a reasonable

compensation. To show his bonafide, he has submitted a demand draft No. 927980, dated 18.12.2017, of Bank of Baroda, Mohali Branch, for Rs. 300000/-, in favour of complainant-respondent No. 2 in Court today and same is taken on record. Let the same be kept in safe custody of Registrar (Judicial) of this Court, for handing over the same to complainant-respondent No. 2 on her appearance. Photocopy of the same be retained on file.

Notice of motion to respondents.

On behalf of State, Ms. Monika Jalota, DAG Punjab, accepts notice. Let custody certificate be filed before the next date of hearing.

List on 21.2.2018.

The learned senior counsel seeks suspension of sentence on the ground that revisionist needs time to arrange for the balance amount. It is further undertaken that if revisionist fails to pay the remaining payment, his interim bail may be cancelled. In these circumstances, revisionist is ordered to be released on interim bail, for a period of six weeks on his furnishing bail bond in the sum of rupees 50000/- with one surety of the like amount to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Mohali, to arrange the balance amount and pay the same to complainant-respondent No. 2, failing which his interim bail will be cancelled.”

Thereafter, vide orders dated 20.03.2018 and 05.09.2018, counsel for the petitioner had sought time to comply with the directions passed by Hon’ble the Apex Court in the case of **Damodar S. Prabhu Vs. Sayed Babalal H. 2010(2) RCR (Criminal) 851** and while adjourning the matter for today i.e. 19.09.2018, the petitioner was directed to deposit 15% of the cheque amount towards compounding fee.

Since the petitioner offered to make payment of the cheque amount, the matter was relegated to the Mediation and Conciliation Centre of this Court vide order dated 21.02.2018. During the mediation proceedings, a compromise dated 12.01.2018 was arrived at between the parties, wherein it was settled that the petitioner shall pay the outstanding amount of Rs.19 lakhs to respondent no.2-complainant and accordingly, Rs.16 lakhs were paid to respondent no.2-complainant by way of demand draft no.928006 dated 12.01.2018 payable at Bank of Baroda. The respondent-complainant is also held entitled to Rs.3 lakh, which are lying deposited with this Court. Paragraphs no.3 and 4 of the said compromise read as under:-

“3. That now both the parties wants to arrive at compromise. That as per compromise settled between the parties, the second party is ready to pay Rs.19 Lacs (Nineteen Lacs Only) to the 1st party and the 1st party will receive the same in the shape of demand draft for Rs.16 Lacs payable at Bank of Baroda dated 12.01.2018 bearing No.928006 today in presence of the witness and the first party is also entitled for the Rs.3 Lacs which was submitted by Sh. Anil Kumar of the second party before the Hon’ble Punjab and Haryana High Court, payable BOB Mohali dated 18.12.2017 bearing No.927980.

4. That as both the parties arrived at compromise and the second party is ready to pay as per settled between them therefore there is no dispute remained between the parties and the amount of civil suit between the parties relished and nothing is due against the second parties and a criminal complaint filed U/s 138 of the NI Act also arrived at compromise and the first parties have no objection if the criminal appeal filed by Sh. Anil Kumar of Second Parties

before Hon'ble Punjab and Haryana High Court is accepted as per compromise and Sh. Anil Kumar is acquitted. It is further mentioned here that both the parties will not file any case complaint or application with regard to the proceedings arrived at compromise, and they will not file any kinds of objection against each other."

Learned counsel for the petitioner submits that pursuant to the aforesaid orders of this Court and in compliance of directions issued in the judgment of Hon'ble the Apex Court in the case of **Damodar S. Prabhu** (*supra*), the petitioner has deposited 15% of the cheque amount i.e. Rs.3,45,000/- with the State Legal Services Authority, Chandigarh vide demand draft No.928313 dated 10.09.2018 drawn on Bank of Baroda. He has produced a photocopy of the receipt No.3537 dated 10.09.2018, which is taken on record.

Counsel for the respondent-accused is not available. However, respondent no.2 Manju Anand is present in Court and has not disputed the submissions made on behalf of the petitioner. She fairly submits that the matter has been resolved between the parties and the complainant has received the outstanding amount of Rs.16 lakhs and therefore, she has no objection in case the complaint is quashed.

Learned counsel for the petitioner, on instructions from his client i.e. petitioner Anil Kumar has identified respondent no.2.

I have heard learned counsel for the parties.

In view of the above, it is apparent that the matter has been finally settled between the parties and the liability is discharged. Since the petitioner has also deposited 15% of the cheque amount with the State

Legal Services Authority, UT, Chandigarh in compliance of order dated 05.09.2018 of this Court, necessary permission to compound the offence under Section 138 of the Act is granted.

Accordingly, the present revision petition is allowed and the impugned judgment of conviction and order of sentence dated 12.02.2016 passed by Judicial Magistrate Ist Class, SAS Nagar, Mohali as well as judgment dated 03.11.2017 passed by the learned appellate Court are set aside and the petitioner is acquitted of the charge levelled against him.

Registry is directed to hand over the demand draft No.927980 dated 18.12.2017 of Bank of Baroda, Mohali for an amount of Rs.3,00,000/- to respondent no.2 Manju Anand or her counsel against receipt. Petitioner is also directed to get the said demand draft validated from the concerned bank, if need be.

September 19, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No