

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

CRR No. 2070 of 2018 (O&M)

Date of Decision: 16.08.2018

Chiranji Lal Sharma

...Petitioner

Versus

Sunil Hans

...Respondent

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Anil Rathee, Advocate
for the petitioner.

Mr. Sanjiv Sharma, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting aside the judgment of conviction dated 09.02.2016 and order of sentence dated 11.02.2016, passed by the Judicial Magistrate First Class, Gurugram, vide which, the petitioner was held guilty for commission of offence punishable under Section 138 of the Negotiable Instruments Act (*for short 'N.I. Act'*) and was directed to undergo simple imprisonment for a period of one year and as per Section 357(3) Cr.P.C., he was further directed to pay a sum of ₹35,00,000/- (Rupees thirty five lakh) to the complainant so as to compensate him for the harassment suffered by him on account of dishonouring of the cheque, within a period of 30 days and in default of payment, petitioner was further directed to undergo simple imprisonment for a period of three months; as well as the judgment dated 06.06.2018, passed by the lower appellate Court, dismissing the appeal filed by the petitioner.

In brief, the facts of the case are that the respondent/complainant filed a complaint under Section 138 of the N.I. Act on the ground that the petitioner/accused has taken a friendly loan of ₹33,00,000/- (Thirty three lakh) from him on 20.02.2014 for a period of six months and in discharge of the legal liability, he had issued a cheque of ₹33,00,000/-, bearing No. 760434 dated 23.09.2014, drawn on Punjab and Sind Bank, HUDA Market, Sector 10-A, Gurugram. The respondent/complainant presented the said cheque in his bank on 25.09.2014, however, the same was returned with the remarks “*insufficient funds*”. The respondent/complainant served a legal notice dated 01.10.2014 upon the petitioner/accused but despite that the petitioner failed to repay the cheque amount, which led the respondent/complainant to filing of the present complaint under Section 138 of the N.I. Act.

The respondent/complainant led his preliminary evidence and the petitioner/accused was summoned to face trial, vide order dated 29.10.2014, however, he was released on bail. Thereafter, on 05.02.2015, charge was framed against the petitioner/accused under Section 138 of the N.I. Act, to which, the petitioner did not plead guilty and claimed trial.

The respondent/complainant, thereafter, appeared as CW1 and tendered his affidavit as CW1/A and also exhibited the original cheque as Ex. C-1, bank return memo as Ex. C-2, legal notice as Ex. C-3 and postal receipt as Ex. C-4. The respondent/complainant also produced Tilak Kumar Chopra, an Officer of Punjab and Sind Bank, Gurugram as CW-2, who produced the bank record as Ex. CW2/A to Ex. CW2/C. Swati Aggarwal, Branch Head, Andhra Bank, Gurugram, appeared as CW3 and proved the bank statement of the respondent/complainant as Ex. CW3/A and account

opening form as Ex. CW3/B. Thereafter, the respondent/complainant closed his evidence.

In the statement, recorded under Section 313 Cr.P.C., the petitioner/accused alleged his false implication and stated that his blank signed cheque has been misplaced and he has not taken any loan from the respondent/complainant.

The trial Court, thereafter, held the petitioner guilty for commission of offence punishable under Section 138 of the N.I. Act and convicted him as noticed above.

Aggrieved against the judgment of conviction and order of sentence, passed by the trial Court, the petitioner/accused preferred an appeal before the lower appellate Court, however, the same was dismissed, vide judgment dated 06.06.2018. Hence, the present revision petition.

On 14.06.2018, learned counsel for the petitioner submitted that the petitioner/accused has compromised the matter with respondent/complainant Sunil Hans, who has executed an affidavit dated 11.06.2018 (Annexure P-2) acknowledging the compromise and that he has received the entire amount from the petitioner/accused. Considering the said fact, the sentence of the petitioner/accused was suspended by the order of the even date.

Today, both the parties are present in Court and the matter was referred to Mediation and Conciliation Centre of this Court for recording of the statement of the parties.

The parties appeared before the Mediator and a settlement/agreement dated 16.08.2018 has been arrived at between the parties. The respondent/complainant, in his statement recorded before the

Mediator, has stated that he has received the full and final payment from the petitioner/accused towards the settlement of cheque in dispute dated 23.09.2014 and he has no objection if the present petition is allowed. It is also stated that no other litigation is pending between the parties.

Learned counsel for the petitioner/accused as well as learned counsel for respondent/complainant are *ad idem* that the compromise has been arrived at between the parties on their own free will and without any pressure and the parties will remain bound by the terms and conditions of the said settlement/agreement.

After hearing both the parties and considering the fact that the parties have amicably settled their dispute before the Mediation and Conciliation Centre of this Court and no other litigation is pending between them, the permission is granted to compound the offence under the provisions of Section 147 of the N.I. Act.

It has been held by Hon'ble Supreme Court in **2018 (1) R.C.R. (Criminal) 971, Sri Ashish Subba vs. Manoj Kumar Agarwal and another** that when the parties have amicably settled their dispute, the conviction and sentence of the accused, under Section 138 of the N.I. Act, can be set aside.

Accordingly, this revision petition is allowed and judgment of conviction dated 09.02.2016 and order of sentence dated 11.02.2016, passed by the trial Court, as well as judgment dated 06.06.2016, passed by the lower appellate Court, are set set aside.

August 16, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*