IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No.2523 of 2018 (O&M).
Decided on:-August 14, 2018.

Jagjit Singh.

.........Petitioner.

Versus

Lakhvinder Singh and another

.........Respondents.

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

*****

Present:- Mr. Shashi Kumar Yadav, Advocate
for the petitioner.

Mr. Parvinder Singh Ahluwalia, Advocate
for respondent No.1-complainant.

Mr. Surinder Pal Singh Tinna, Addl. A.G., Punjab
for respondent No.2-State.

HARI PAL VERMA, J. (ORAL)

The petitioner-accused has filed the present revision petition against the judgment dated 25.07.2018 passed by learned Additional Sessions Judge, Fatehgarh Sahib whereby his appeal filed against the judgment of conviction and order of sentence dated 01.12.2016 passed by learned Judicial Magistrate 1st Class, Fatehgarh Sahib, was dismissed with modification in the order of sentence.

Briefly stated, the respondent No.1-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) on the plea that the petitioner-accused had borrowed an amount of Rs.20 lakh from the complainant on 12.02.2014 for his personal need and in order to discharge his legal liability, the petitioner had issued a cheque bearing No.361642 dated 15.04.2015 for a sum of Rs.20 lakh drawn on State Bank of Patiala, Branch Bassi Pathana, District Fatehgarh Sahib. However, when the cheque was presented to the bank, it was dishonoured, which led to filing of the complaint.

Learned Magistrate vide judgment of conviction and order of sentence dated 01.12.2016 held the petitioner guilty for commission of offence punishable under Section 138 of the Act and sentenced him to undergo simple imprisonment for a period of one year. By invoking the provisions of Section 357 Cr.PC, learned Magistrate also awarded compensation of Rs.20 lakh to the complainant to be paid by the accused. It was further ordered that in default of this, the convict shall undergo an additional imprisonment of six months.

Aggrieved against the said judgment and order, the petitioner-accused filed an appeal before the Court of Session. While the appeal was pending before the appellate Court, on the request of the petitioner-accused, the matter was taken up before the National Lok Adalat held on 09.04.2018, where the parties arrived at an amicable settlement. Accordingly, the petitioner suffered a statement on 09.04.2018 before the Lok Adalat that he shall make payment of Rs.5 lakh in the following manner:

> *"1st Installment - Rs.1 lakh on 05.05.2018*
> *2nd Installment - Rs.1 lakh on 02.07.2018*
> *3rd Installment - Rs.1 lakh on 18.08.2018*
> *4th Installment - Rs.1 lakh on 29.09.2018*
> *5th Installment - Rs.1 lakh on 17.11.2018."*

He had further stated in his statement that in case he failed to abide by the terms of the compromise or fail to pay even a single installment, in that case, his appeal be decided on merits on the same day.

However, on 05.05.2018, the petitioner-accused made a part payment of Rs.50,000/- of the 1st installment and thereafter, on 06.06.2018, he again made part payment of Rs.25,000/- of the 1st installment. Thereafter, the petitioner-accused failed to make any payment as per the terms of compromise and ultimately, his appeal was dismissed by learned appellate Court vide judgment dated 25.07.2018. However, learned appellate Court reduced the compensation amount of Rs.20 lakh awarded by the trial Court to an amount of Rs.5 lakh being the amount settled between the parties in the Lok Adalat. It was also ordered that the amount of Rs.75,000/- paid during the pendency of the appeal shall stand adjusted against the amount of Rs.5 lakh and if the convict does not pay this amount, he shall further undergo simple imprisonment for three months in addition to the substantive sentence of one year awarded by the trial Court.

It is in these circumstances, the petitioner-accused has preferred the present revision petition before this Court.

Learned counsel for the petitioner has contended that though there was delay on the part of the petitioner to pay the installments on the agreed terms, but now the remaining amount of Rs.4,25,000/- has been handed over to the respondent No.1-complainant by way of a demand draft dated 06.08.2018 issued by the Punjab and Sind Bank in favour of the respondent No.1-complainant. He has produced a photocopy of the said bank draft in the Court, which is taken on record.

He has further contended that since the petitioner has paid the amount of Rs.5,00,000/- to the complainant in terms of the compromise arrived at between the parties before the National Lok Adalat held on

09.04.2018, permission to compound the offence may also be granted. He has further submitted that since the petitioner has cleared all the outstanding amount of the complainant in terms of the compromise, he may be acquitted of the charges framed against him.

He has further argued that the petitioner is a heart patient and is a government employee. He has minor children, old aged parents and there is no other male member in the family to look after them. He is a first time offender and is facing the criminal proceedings since 14.05.2015 i.e. the date when the complaint was filed against him. Thus, he is not in a condition to pay 15% of the cheque amount to the State exchequer as per guidelines laid down by Hon'ble Supreme Court in ***Damodar S. Prabhu Versus Sayed Babalal H. 2010(2) RCR (Criminal) 851***. He has prayed that the deposit of 15% amount may be waived off. In support of his contention, he has placed reliance upon the law laid down by Hon'ble Supreme Court in ***Madhya Pradesh State Legal Services Authority Versus Prateek Jain and another 2014(4) RCR (Criminal) 178***, wherein it has been held that though accused has to deposit 15% of cheque amount in Court as per guidelines framed in ***Damodar S. Prabhu's case (supra)***, but where settlement is made in Lok Adalat, the Lok Adalat can waive the same for reasons to be recorded.

On the other hand, learned counsel for the respondent No.1-complainant has argued that in *stricto sensu*, the petitioner has not acted as per the terms and conditions of the compromise arrived at between the parties before the National Lok Adalat held on 09.04.2018 and has failed to pay the installments. The complainant has also taken loan from the bank in order to discharge his liability and has failed to pay the said loan for which he had to pay the interest as well. Power of attorney filed on behalf of the complainant in the Court, is taken on record.

I have heard learned counsel for the parties.

Though the matter was resolved between the parties before the National Lok Adalat held on 09.04.2018 and this fact is duly mentioned in the impugned judgment dated 25.07.2018 passed by learned appellate Court, what is required to be considered in the present revision petition is that the petitioner has failed to pay the installments in terms of the compromise so arrived and has delayed the payment.

The petitioner has now paid the amount of Rs.5 lakh to the respondent No.1-complainant in terms of the compromise, this Court finds that in view of the antecedents of the petitioner coupled with the fact that the matter was compromised between the parties before the National Lok Adalat held on 09.04.2018 as well as in the light of the observations made by Hon'ble Supreme Court in ***Prateek Jain and another's case (supra)***, the ends of justice would be met, if the requirement of deposit of 15% of the cheque amount is waived off.

However, since there is some delay on the part of the petitioner in making the payment in terms of the compromise, the respondent No.1-complaiannt shall be entitled to receive Rs.25,000/- over and above the agreed amount of compromise.

Accordingly, necessary permission to compound the offence under Section 138 of the Act is granted and the requirement of deposit of 15% of the cheque amount is waived off. The impugned judgment of conviction and order of sentence dated 01.12.2016 passed by the trial Court as well as the judgment dated 25.07.2018 passed by learned appellate Court are set aside and the petitioner is acquitted of the charge levelled against him subject to payment of Rs.25,000/- as an additional amount to the respondent No.1-complainant as the petitioner has delayed the payment of agreed amount in terms of the compromise arrived at between the parties before the National Lok Adalat.

The present revision petition is, accordingly, allowed.

The petitioner be released forthwith, if not required in any other case. However, before his release, the CJM/Duty Magistrate, Fatehgarh Sahib shall ensure that the petitioner has made the payment of Rs.25,000/- to the respondent No.2-complainant.

(HARI PAL VERMA)
JUDGE

August 14, 2018
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No