

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

240(1)

CRR-2782-2018 (O&M)

Rajinder Gupta

.....Petitioner

Versus

Rakesh Kumar

.....Respondent

240(2)

CRR-2783-2018 (O&M)

Rajinder Gupta

.....Petitioner

Versus

Rakesh Kumar

.....Respondent

Date of Decision:17.09.2018

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

**Present: Mr. Gaurav Partap S. Pathania, Advocate,
for the petitioner in both cases.**

**Mr. Hitesh Ghai, Advocate for
Mr. Amit Arora, Advocate, for the respondent.**

HARI PAL VERMA, J.(Oral)

These two identical criminal revision petitions bearing CRR-2782-2018 and CRR-2783-2018 (**Rajinder Gupta Versus Rakesh Kumar**), are being decided together, vide this common order, with the consent of learned counsel for the parties as both these cases are arising out of the same set of facts. However, for the facility of reference, facts are being culled out from CRR-2782-2018 (**Rajinder Gupta Versus Rakesh Kumar**).

Petitioner–Rajinder Gupta has filed the present criminal revision petitions against judgment dated 01.08.2018 passed by learned

Additional Sessions Judge, Pathankot, whereby the appeal filed by the petitioner against the judgment dated 29.01.2018 passed by learned Judicial Magistrate, 1st Class, Pathankot, was dismissed.

Briefly stated, the facts of the case are that on account of friendly relations, the petitioner borrowed a sum of ₹2,35,000/- from the complainant and in discharge of his legal liability, issued two cheques bearing cheque No.273191 dated 17.06.2016 for a sum of ₹85,000/- and cheque No.273192 dated 16.08.2016 for a sum of ₹1,50,000/- in favour of the complainant drawn on State Bank of Patiala, Gandhi Chowk. However, when the said cheques were presented for encashment by the respondent-complainant, the same were dishonoured by the bank with the remarks "Funds Insufficient". Thereafter, the respondent-complainant sent a legal notice dated 26.08.2016 to the petitioner-accused through registered post, but the petitioner neither filed its reply nor made the payment to the complainant. As such, the complaint was filed against the petitioner.

Learned Magistrate vide judgment dated 29.01.2018, held the petitioner guilty for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") and vide separate order of even date, sentenced him to undergo rigorous imprisonment for one year, to pay fine of ₹5,000/- and in case of default of payment of fine, to undergo further imprisonment for two months. Similar sentence was also awarded to the petitioner in CRR-2783-2018.

Aggrieved against the judgment of conviction and order of sentence, the petitioner filed an appeal before the learned Additional Sessions Judge, Pathankot. Learned lower Appellate Court vide judgment dated 01.08.2018 dismissed the appeal filed on behalf of the petitioner

upholding the judgment of conviction and order of sentence dated 29.01.2018 passed by learned trial Court.

It is in these circumstances, the present revision petitions have been filed on behalf of the petitioner-accused.

On 23.08.2018, this Court has passed the following order:-

Learned counsel for the petitioner states that after the appeal having been dismissed by learned Additional Sessions Judge, Pathankot vide judgment dated 01.08.2018, the parties have entered into a compromise and against the total cheque amount of Rs.2,35,000/-, the petitioner has paid a sum of Rs.1,75,000/- to the respondent-complainant by way of a bank draft.

Notice of motion.

At this stage, Mr. Amit Arora, Advocate has put in appearance and filed Memo of Appearance on behalf of the respondent in the Court, which is taken on record. He does not dispute the factum of compromise between the parties.

*Learned counsel for the petitioner states that the petitioner is a poor person and is working as a salesman in a shop and would hardly manage his both ends meet. 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 reduced to some extent.*

Learned counsel for the complainant also admits the aforesaid fact.

*Considering the fact that the petitioner is a poor person and is working as a salesman in a shop, the requirement of 15% of compounding fee as per the law laid down in **Damodar S. Prabhu's case (supra)** is reduced to*

the extent of 10%.

Adjourned to 17.09.2018.

Meanwhile, the sentence awarded to the petitioner shall remain suspended subject to his furnishing fresh bail bonds and surety bonds to the satisfaction of CJM/Duty Magistrate, Pathankot.

The petitioner is directed to deposit the 10% amount of the cheque in question as compounding fee with the State Legal Services Authority, Punjab within a period of seven days from today. Photocopy of this order be placed on the file of other connected case.”

Learned counsel for the petitioner states that in compliance of order dated 23.08.2018 of this Court, the petitioner has deposited the compounding fee of ₹23,500/- with the State Legal Services Authority, Punjab, which is 10% of the cheque(s) amount, in terms of judgment of the Hon'ble Apex Court in **Damodar S. Prabhu v. Sayed Babalal H., 2010(2) RCR (Crl.) 851**. Photocopy of the receipt No.302214 dated 28.08.2018 is taken on record.

Learned counsel for the petitioner further contends that in view of settlement between the parties, permission to compound the offence may also be granted and the petitioner may be acquitted of the charge framed against him.

On the other hand, learned counsel for the respondent-complainant fairly admits that the cheque(s) amount has been paid to the complainant, no outstanding amount is pending against the petitioner and therefore, the respondent-complainant has no objection in case the complaint is quashed.

I have heard learned counsel for the parties.

In view of the above, it is apparent that the matter has been

finally settled and the liability is discharged. Since the petitioner has also deposited 10% of the cheque(s) amount with the State Legal Services Authority, Punjab, in compliance of order dated 23.08.2018, the present revision petitions are allowed and necessary permission to compound the offence under Section 138 of the Act is granted.

Consequently, the impugned judgments dated 29.01.2018 and 01.08.2018 passed by the Courts below are set aside and the petitioner is acquitted of the charge framed against him in both the cases.

September 17, 2018

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(HARI PAL VERMA)**JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No