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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No.477 of 2018.
Decided on:- December 18, 2018.

Neeraj Singh.

……Petitioner.

Versus

State of Haryana and another

……Respondents.

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

*****

Present:- Mr. Saleem Ahmed, Advocate
for the petitioner.

Mr. Ripu Daman, AAG, Haryana

None for respondent No.2.

HARI PAL VERMA, J. (ORAL)

The petitioner has filed the present revision petition against the judgment dated 16.01.2018 passed by learned Additional Sessions Judge, Faridabad whereby his appeal filed against the judgment of conviction dated 21.10.2015 and order of sentence dated 30.10.2015 passed by learned Judicial Magistrate 1st Class, Faridabad, was dismissed.

Briefly stated, the facts of the case are that the respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) alleging therein that the petitioner-accused in discharge of his legal liability issued a cheque bearing No.000144 dated 22.10.2013 in the sum of Rs.1,50,000/- drawn on Bank of India, Faridabad Branch in favour of the respondent-complainant. However, when the respondent-complainant presented the said cheque for encashment on

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24.10.2013 through his banker Punjab National Bank, Faridabad, the same was dishonoured by the bank on the ground of "insufficient funds". Thereafter, legal notice dated 23.11.2013 was issued by the respondent-complainant to the petitioner-accused but the petitioner failed to make the payment. As such, the complaint was filed against him.

Learned Magistrate vide judgment dated 21.10.2015 convicted the petitioner for offence punishable under Section 138 of the Act and vide separate order dated 30.10.2015, sentenced him to undergo simple imprisonment for a period of one year along with compensation amount of Rs.2,25,000/- to be paid to the complainant within one month from the date of passing of the order. It was further ordered that the amount of compensation shall be recovered as per the provisions of Section 421 Cr.P.C.

Aggrieved against the said judgment and order, the petitioner-accused filed an appeal before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Faridabad vide judgment dated 16.01.2018.

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

Learned counsel for the petitioner has contended that during pendency of the present revision petition the matter has been settled between the parties and the cheque amount has been paid. He has further submitted that in compliance of order dated 17.04.2018 passed by this Court, the petitioner has deposited the compounding fee of Rs.22,500/- with the High Court Legal Services Committee, Chandigarh. In support of his contention, he

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has placed reliance upon the receipt No.311 dated 15.12.2018 issued by the Superintendent of this Court.

Learned counsel for the petitioner has further submitted that in view of compromise, 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 respondent, he may be acquitted of the charges framed against him.

I have heard learned counsel for the parties.

Though no one has put in appearance on behalf of respondent No.2-complainant today, but on 17.04.2018, when this petition came up for hearing before this Court, Mr. Munfaid Khan, Advocate had put in appearance on behalf of respondent No.2-complainant and admitted the factum of compromise between the parties. The order dated 17.04.2018 is reproduced as under:

> *"Notice of motion in the main petition as well as in the application for suspension of sentence of imprisonment of the petitioner.*
>
> *At this stage Mr.Munfaid Khan, Advocate has put in appearance on behalf of respondent No.2 – complainant and accepts notice on her behalf.*
>
> *It is stated by learned counsel for the petitioner that the matter has been settled between the parties inasmuch as the cheque amount has been paid. This fact is admitted by learned counsel for the complainant. It is stated by learned counsel for the petitioner that the petitioner is behind bars from the last four months and he granted bail by suspending his remaining sentence of imprisonment.*

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Accordingly, ***CRM-4407-2018*** *is allowed and the remaining sentence of imprisonment of the petitioner Neeraj Singh during the pendency of the revision is ordered to remain suspended and he is ordered to be released on bail subject to his furnishing personal bond and surety bond to the satisfaction of the learned Chief Judicial Magistrate/Duty Magistrate, Faridabad.*

The petitioner is directed to deposit 15% of the cheque amount with High Court Legal Services Committee, Chandigarh in terms of ratio of authority ***Damodar S. Prabhu Versus Sayed Babalal H., 2010(2) R.C.R.(Criminal) 851****.*

Adjourned to 22.5.2018."

Moreover, Hon'ble Apex Court in ***Damodar S. Prabhu's case*** (supra) has held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. Hon'ble Apex Court laid down the following guidelines for compounding of such like offences:

"*(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.*

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

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(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount."

Keeping in view the above facts and circumstances, it is apparent that the matter has been finally settled and the liability is discharged. The petitioner has also deposited 15% of the cheque amount with the concerned authority as per the ratio of law laid down by Hon'ble Apex Court in ***Damodar S. Prabhu's case (supra)***.

Therefore, necessary permission to compound the offence under Section 138 of the Act is granted. The impugned judgment of conviction dated 21.10.2015 and order of sentence dated 30.10.2015 passed by the trial Court as well as the judgment dated 16.01.2018 passed by learned appellate Court are set aside and the petitioner is acquitted of the charge levelled against him.

The present criminal revision, accordingly, stands allowed.

(HARI PAL VERMA)
JUDGE

December 18, 2018
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No

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