

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

CRR No. 217 of 2019 (O&M)

Date of decision: - 06.12.2019

JAI KUMAR AND ANOTHER

...Petitioners

Versus

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sandeep Sharma, Advocate for
Mr. Veneet Sharma, Advocate for the petitioners

Mr. Sarabjit Singh Cheema, AAG, Punjab.

Mr. Rishu Mahajan, Advocate for respondent No. 2.

HARNARESH SINGH GILL, J. (ORAL)

The present revision petition has arisen out of the impugned judgment dated 04.01.2019 passed by the Additional Sessions Judge, Amritsar, vide which the appeal filed by the petitioners, challenging the judgment and order of sentence dated 23.04.2018, passed by the Judicial Magistrate 1st Class, Amritsar in complaint case under Section 138 of Negotiable Instruments Act, 1881 ('Act' for short), Police Station Mohkampura, Amritsar, has been dismissed.

As per the prosecution, on 08.04.2016 a complaint was made by Gurinder Singh-complainant against the petitioners stating that

petitioner No. 1- Jai Kumar had taken a friendly loan of Rs. 25,00,000/- from the complainant for his personal use i.e. Rs. 20,00,000/- in cash and Rs. 5,00,000/- through RTGS from account No. 0711000102293994 of PNB Jatinpur, District Amritsar, on 30.05.2015.

After preliminary evidence, petitioners were summoned to face trial under Section 138 of the Act.

Notice of accusation was served upon petitioner No. 1 to which he pleaded not guilty and claimed trial.

Thereafter, cross-examination of complainant-Gurinder Singh CW-1 was conducted and he closed the evidence.

Statement of accused under Section 313 Cr.P.C. was recorded. All the incriminating material was put to the accused, which he denied and pleaded innocence.

In defence, the accused examined DW-1 Wasim Mohd., Nodal Officer, Bharti Airtel Ltd. and closed his evidence.

After appreciating the evidence and after hearing the arguments, the learned trial Court vide judgment and order dated 23.04.2018 convicted accused No. 1 under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of 2 years and to pay compensation of Rs. 25,00,000/- under Section 357(3) Cr.P.C. and in failure of payment of compensation to complainant, to further undergo rigorous imprisonment for a period of two months.

Feeling aggrieved against the judgment and order dated 23.04.2018, the accused-appellants filed the appeal along with an application under Section 391 Cr.P.C. before the learned Appellate Court.

After appreciating the evidence on record, the learned Appellate Court concluded that the learned trial Court has rightly decided the complaint by appreciating the entire evidence and facts and circumstances and there was no infirmity in the impugned judgment passed by learned trial Court and the same stood affirmed and dismissed the appeal and application under Section 391 Cr.P.C. and issued conviction warrants to undergo imprisonment as awarded by the learned trial Magistrate.

Aggrieved by the said judgment, the petitioner has preferred the present revision petition.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the Courts below.

Learned counsel for the petitioners submit that the matter has been compromised between the parties and as per the compromise (Annexure A-1), the amount in question has been paid to complainant-respondent No. 2-Gurinder Singh. It has been prayed that since the matter has been compromised and the amount in question has been paid, the offence under Section 138 of the Act may be compounded.

This factum qua compromise has not been disputed by the learned counsel appearing for complainant-respondent No. 2.

It is, thus, jointly contended by the counsel for petitioner and respondent No.2 that in view of the compromise, the present petition may be allowed; the impugned judgments and order passed by the Courts below, may be set aside and the petitioner may be acquitted of the charge framed against him. In support of the said assertions, learned counsel for

the parties have relied upon the judgment of this Court reported as **Jaswinder Singh Vs. State of Punjab and another, 2011(7) R.C.R. (Criminal) 2613.**

Reliance is also placed upon the judgment passed by Supreme Court of India in the case of **Saroj Pande Vs. Grasim Cement Prop. G.C. Indus. Ltd. 2012 (5) R.C.R. (Criminal) 377.**

It is contended by the learned State counsel that as the matter is purely private in nature being the proceedings arising out of Section 138 of the Act, he has no objection in case the relief sought for by the petitioner is granted.

In view of the above, the permission to compound the offence punishable under Section 138 of the Act is granted. The impugned judgment dated 04.01.2019 passed by the Additional Sessions Judge, Amritsar, and judgment of conviction and order of sentence dated 23.04.2018, passed by the Judicial Magistrate 1st Class, Amritsar, are set aside. The complaint under Section 138 of the Act is dismissed and the petitioners are acquitted of the accusation of charge.

Petition is disposed of accordingly.

(HARNARESH SINGH GILL)
JUDGE

06.12.2019

Mangal Singh

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No