

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

CRR No. 584 of 2019(O&M)

Date of Decision: 16.07.2019

Ram Kishan

....Petitioner

Versus

State of Haryana and anr

...Respondents

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Satbir Singh Gill, Advocate for the petitioner.

Mr. Rahul Mohan, DAG, Haryana.

Mr. G.S. Kuka, Advocatefor respondent No.2.

MAHABIR SINGH SINDHU, J.(Oral)

Present revision petition has been filed against the impugned judgment of conviction and order of sentence dated 05.04.2017 and 07.04.2017, passed by learned Judicial Magistrate First Class, Sirsa (for short 'JMIC'), vide which the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and sentenced to undergo rigorous imprisonment for one year along with amount of compensation to the tune of Rs. 3,30,000/-. Further challenge is to the judgment dated 18.02.2019 passed by learned Additional Sessions Judge, Sirsa, whereby revision petition has been dismissed against the aforesaid conviction and sentence.

Brief facts of the case are that the complainant/respondent No.2 is agriculturist by profession and was having dealing with accused No.1. The complainant/respondent No.2 used to sell crops of different seasons through the commission agency

of *M/s Rameshwar Dass and sons* and petitioner is the sole proprietor of the said agency. As such the petitioner has gained faith of the complainant and huge amount of the complainant remained with the petitioner in advance. Petitioner assured the complainant/respondent No.2 for payment of heavy rate of interest than provided by the bank on Fixed Deposit. On 20.04.2015, the account of the complainant/respondent No.2 maintained by the petitioner has been settled and a sum of Rs. 3,30,000/- was found as in advance with the said firm and same was admitted by the petitioner as legal liability. The petitioner in discharge of his pre-existing legally enforceable liability, issued a cheque of Rs. 3,30,000/- bearing No. 000851 dated 10.06.2015 in favour of the complainant out of his account No. 073305000688. The complainant-respondent No.2 presented said cheque for encashment, but the same was returned unpaid by the bank with remarks "insufficient funds" vide memo dated 04.09.2015. Consequently, a statutory legal notice dated 11.09.2015 was issued to the petitioner, but of no effect and that led to the filing of the complaint under Section 138 of the Act.

On the basis of the preliminary evidence led by the respondent No.2-complainant the petitioner was summoned to face trial for the commission of offence punishable under Section 138 of the Act, and thereafter notice of accusation was served upon him but he pleaded not guilty and claimed trial.

In order to prove the case, the complainant-respondent No.2 stepped into the witness box as CW1, examined Jagdish

Chander, Spot Officer ICICI Bank, Sirsa as CW2 and Ajaib Singh, Clerk S.B.I. Madhosinghana as CW3. The said complainant witnesses proved the attested copy of account statement of the said firm (Ex. CW2/A) and cheque return memo Ex. CW2/B, cheque Ex. C1, return memo Ex. C2 and account statement of the petitioner and proved the account statement as Ex. C8 as well as return memo Ex. C2.

After closure of the evidence of the complainant, statement of petitioner was recorded under Section 313 of Cr.P.C., wherein, he pleaded innocence alleging false implication. Neither the petitioner has himself stepped into witness box, nor examined any witness in support of his defence. The petitioner has relied solely upon the cross-examination of complainant, wherein he failed to either shake the credit of CW-1 or to prove his defence.

After hearing both parties and perusal of the records, the petitioner was convicted and sentenced vide judgment and order dated 05.04.2017 and 07.04.2017, passed by learned JMIC, under Section 138 of the Act and sentenced to undergo rigorous imprisonment for one year along with amount of compensation to the tune of Rs. 3,30,000/- to be paid to the complainant-respondent No.2. within two months of expiry of time prescribed for appeal or on its disposal, if any preferred.

The above judgment of conviction and order of sentence was affirmed by learned Sessions Judge, Sirsa, while passing the impugned judgment dated 18.02.2019, hence the present petition.

During the pendency of the revision petition, this Court

vide order dated 09.05.2019, granted interim bail to the petitioner and thereafter, the matter was compromised between the parties and on 27.05.2019, this Court passed the following order:-

“Learned counsel for the petitioner contends that matter has been compromised between the parties.

Petitioner shall file his affidavit before learned trial Court that there is no other criminal case pending against him and also give the details of any other FIR(s), if any, which have already been quashed on the basis of compromise.

In view of above, let the parties be appeared before the Court of learned Illaqa Magistrate/trial Court on 30.05.2019 to record their statements with reference to the compromise, if any, entered into between them. Learned Illaqa Magistrate/trial Court will record the statements of all accused, complainant/injured and victim, if any and submit a report along with the statements to this Court, before the next date of hearing, containing the following information:-

(i) Whether the statements of the parties are bona fide and are not result of any pressure or coercion etc. in any manner?

(ii) Whether the compromise effected between the parties is genuine and valid?

(iii) Whether all the accused, complainant and injured are party to the compromise and if not, the details/particulars of such person(s)?

(iv) Whether any other case is pending against either of the parties or not, if yes, the details thereof?

(v) Whether any of the persons involved in this case/dispute has been declared a proclaimed offender?

(vi) Whether any of the petitioner(s) is/are previous convict or not?

List before this Court on 16.07.2019 for further consideration.

Interim order to continue.

Meanwhile, learned State Counsel shall also get the instructions in the matter as to whether the State has any objection or not?

A copy of this order be sent to learned Judicial Officer concerned forthwith for information and strict compliance.”

In terms of above order, the statements of the parties were recorded by learned Chief Judicial Magistrate, Sirsa and submitted a report dated 18.06.2019 and operative part of the same reads as under:-

“....this Court is of the opinion that the matter in

question has been compromised between the parties without any fear coercion, inducement or threat.”

A perusal of the aforesaid report clearly reveals that the matter has been compromised by both the parties with their free consent, voluntarily and without any coercion or undue influence and no one has been declared as proclaimed offender in this case.

Heard learned counsel for the parties and perused the paper book carefully.

It is not in dispute that Section 147 of the Act postulates that every offence punishable under this Act is compoundable and it is well settled principle of law that once the erring party has made the payment of entire amount, then both the parties with their free consent, are entitled to compound the offence, and the same is no more res-integra. The Hon'ble Supreme Court in case **K.Subramanian Vs. R.Rajathi Represented by P.O.A.P.Kaliappan, (2010) 15 Supreme Court Cases 352** has held that under such circumstances, the parties be permitted to compound the indicated offence and the relevant para No. 8 thereof reads as under:-

“8. Having regard to the salutary provisions of Section 147 of the Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.”

It is proved on record that the both sides have compromised the matter with their free consent.

Thus, it would be in the interest of justice that parties be allowed to compound the offence to enable them to live in peace and harmony. Even otherwise, there is no legal impediment in this case and the same is covered by the ratio of law laid down in the judgment of Hon'ble Supreme Court in **K. Subramanian's case (supra)**.

In view of the above, approval is granted for compounding the offence under Section 138 of the Act. Since the parties have already settled the matter and further jointly stated that at present, financial condition of the petitioner is very poor, therefore, keeping in view the law laid down by Hon'ble Supreme Court in **Madhya Pradesh State Legal Authority v. Prateek Jain and another, (2014) 10 SCC 690**, the revision petition is allowed and the impugned judgment passed by the Courts below are set aside and the petitioner is acquitted of the charge framed against him, subject to payment of costs of **Rs.15,000/-** , to be deposited before the High Court Legal Services Committee within four weeks from the receipt of certified copy of this order.

Compliance report be sent to this Court.

[MAHABIR SINGH SINDHU]
JUDGE

July 16, 2019
rashmi

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no