

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

CRM-M-19751-2016
Date of Decision:-06.02.2019

Madan Lal and another

... Petitioners

Versus

Mohini Joshi

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Arun Takhi, Advocate
for the petitioners.

Mr. Bhanu Partap Singh, Advocate
for the respondent.

GURVINDER SINGH GILL, J. (Oral)

1. By way of filing this petition, the petitioners seek quashing of complaint No.5 dated 05.03.2011 (Annexure P-6) and also the summoning order dated 25.08.2015 (Annexure P-7) and all the consequent proceedings emanating therefrom.

2. The controversy in nut-shell hinges around a receipt of ₹90,000/- which the complainant alleges is a forged receipt.
3. The learned counsel for the petitioners has submitted that in fact a civil suit was also filed by the complainant for recovery of an amount of ₹3,64,000/- including the amount of ₹90,000/- which is the subject matter of the complaint in question i.e. the disputed receipt. The said suit was decreed partly for recovery of an amount of ₹3,25,000/- vide judgment dated 11.08.2006 passed by learned Additional Civil Judge (Senior Division), Hoshiarpur wherein the receipt in question for ₹90,000/- was found to be forged.
4. The present petitioner No.1 challenged the aforesaid decree dated 11.08.2006 by way of filing an appeal, which was partly accepted by the learned Additional District Judge, Hoshiarpur vide judgment and decree dated 18.12.2006 wherein the recovery to the extent of ₹2,35,000/- was upheld while holding therein that the receipt in question i.e. receipt of ₹90,000/- was a genuine receipt.
5. It is also not disputed that thereafter the complainant filed RSA No.362 of 2008 before this Court, which was decided on the basis of a compromise vide order dated 14.05.2010 on the basis of statement made by husband of the appellant being attorney of the appellant. The statement made by the aforesaid attorney reads as follows: -

“I, Om Dutt Joshi state that I am husband of appellant Mohini Joshi who has given authority letter Annexure-C which I place on record and in view of this authority letter, I am authorized to effect

compromise on behalf of appellant and to make statement on her behalf.

We state that with the intervention of the Court, we have arrived at amicable settlement in the case. Respondent shall on or before 24.12.2010 deposit ₹5,50,000/- in lump-sum in the trial court for payment to the appellant but the appellant shall be entitled to withdraw the said amount after execution of requisite documents of property/land underneath the factory premises of the Firm in favour of respondent. If the respondent fails to deposit the amount of ₹5,50,000/- within the stipulated period, in that event, the appeal shall be deemed to have been allowed and judgment and decree of the trial court shall stand restored.

The appeal be decided accordingly.”

6. Learned counsel for the petitioners has submitted that the learned trial Court did not consider the fact that in fact the matter already stood compromised. It has been submitted that in fact even the judgment and decree dated 18.12.2006 was never brought to the notice of trial Court from which it would have been apparent that the receipt in question had been found to be a valid receipt.
7. Learned counsel for the respondent has however opposed the petition on the ground that the criminal liability and civil liability are entirely 2 different streams and prosecution on account criminal liability can still continue even if the matter stands compromised and that the compromise allegedly effected in the High Court does not reveal that the complainant had chosen to compromise the criminal matter as well. It has further

been submitted that the complainant has been unnecessarily harassed as he was not able to get the agreed amount as agreed till the year 2015 whereas the same was to be paid upto December, 2010.

8. Having considered rival contentions addressed before this Court, I find that the entire matter proceeds out of some commercial transactions between the parties and the main dispute pertains to a receipt for an amount of ₹90,000/- which as per the complainant was forged. Although in the proceedings of the civil suit, the aforesaid receipt was found to be forged but said finding was reversed by lower Appellate Court. Ultimately the matter was compromised in the High Court. The said facts were, however, never brought to the notice of the trial Court at the time of passing the summoning orders.
9. As regards the contention that the compromise amount was paid belatedly to the complainant, the learned counsel for the petitioners has pointed out that in fact he had deposited the amount well within the stipulated period of '6 months' in the year 2010 itself and that respondents had withdrawn the same belatedly and in these circumstances it cannot be said that petitioners had not complied with the terms of compromise.
10. Having regard to the facts and circumstances of the case, this Court is of the opinion that the factum of compromise and finding of the lower Appellate Court regarding genuineness of receipt could have bearing on the case and the same not having been brought to the notice of trial Court at the time of summoning the accused, the impugned order dated 25.08.2015 (Annexure P-7) is set aside and the matter is remanded back

to the trial Court to consider the matter afresh while taking note of compromise and also the findings of lower Appellate Court as regards validity of receipt.

9. The petition stands accepted accordingly. The parties are directed to appear before the trial Court on 11.3.2019.

(GURVINDER SINGH GILL)
JUDGE

06.02.2019
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No