

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.23167 of 2014 (O&M)
Date of Decision:05.02.2019

Naresh Kumar Singla and another

... Petitioners

Vs.

M/s Shri Krishna Tractors

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioners.

Mr. Bhupinder Singh, Advocate for
Mr. Nitin Thatai, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 02.06.2014 passed by the Additional Sessions Judge, Hissar, vide which the revision petition filed by the respondent/complainant challenging the order of discharge of the petitioner dated 12.12.2012 passed by the trial Court was set aside and the case was remanded back to the trial Court for decision fresh.

Brief facts of the case are that during the pendency of the complaint under Section 138 of the Negotiable Instruments Act, the petitioner-accused moved an application for discharge on the ground that he has made certain payment to the respondent-complainant and only a sum of Rs.8,000/- remains to be paid and he is ready to make the payment of the said amount. The trial Court vide order dated 12.12.2012 allowed the application by passing the following order:-

“4. *After considering the fact pleaded and rebutted by the*

respective parties, it is observed that complaint in hand has been filed qua cheque of sum of Rs.2,78,000/- (Rs. Two lac seventy eight thousand only). However, fact of part payment of sum of Rs.100,000/- (Rs. one lac only) (on 26.02.2005) stood admitted at the time of filing of the complaint itself. Thereafter, an application dated 17.10.2008 had been filed on behalf of the accused/drawer of the cheque to discharge him, as well as to grant compensation under section 250 Cr.P.C. In reply to the said application, the complainant/Holder of the cheque had duly admitted to have received the part payment not only of sum of Rs.100,000/- (Rs. one lac only) but further sum of Rs.1,70,000/- (Rs. one lac seventy thousand only) vide Demand Draft bearing No.196512, dated 5.4.2005.

5. *However, this court is of the opinion that it is settled law in **Alavi Haji Vs. Palapetty Mohammend and another 2007(3) RCR (Criminal)-185 Supreme Court** that it is always open to the accused/drawer to make the payment within 15 days from the receipt of summons from the court to escape prosecution.*

6. *In the present case, part payment of sum of Rs.100,000/- (Rs. one lac only) has been admittedly made by the Drawer on 26.2.2005 i.e. within the 15 days of receipt of Legal Notice under the Act, while a further sum of Rs.1,70,000/- (Rs. One lac seventy thousand only) vide Demand Draft dated 5.4.2005 had also been received by the complainant i.e. even before the appearance of the accused in the court (presence on 2.5.2008). Then also, the accused/drawer was ready to compound the offence by making the payment of the balance sum of Rs.8000/-(Rs. Eight thousand), but he was not allowed to do so vide order dated 25.11.2009 of learned predecessor Magistrate. Hence the complaint in hand was pending merely for a balance sum of Rs.8000/-(Rs. Eight thousand).*

6. *It is pertinent to mention that the accused was still ready to compound the offence under the Act but his application to compound the offence under the act filed for the “second time,” during the de novo trial before the present Succeeding Magistrate*

had, also been dismissed vide order dated 23.7.2012 for want of the consent of complainant/holder of the cheque.

7. *However, now considering the complaint on merits, so as to ascertain the fact that whether a prima facie case, if any was made out against the Drawer of the cheque, it is observed that when sum of Rs.8000/- (Rs. Eight thousand) only was outstanding against the accused/drawer out of the cheque of sum of Rs.2,78,000/- (Rs. Two lac seventy eight thousand only), it could not be said that a prima facie case under the Act was made out regarding dishonour of cheque in question of Rs.2,78,000/- (Rs. Two lac seventy Eight thousand only).*

8. *Since, the accused was ready to pay the balance amount of Rs.8000/- (Rs. Eight thousand only) to the complainant, since the beginning, he is directed to make the payment of the said amount to the complainant within one week from today. No compensation to the complainant is awarded, as it was the complainant who was intentionally avoiding to receive the balance amount while, the accused was ready to compound the offence, since 11.2.2009.*

9. *To come up on 20.12.2012 for making the balance payment of Rs.8000/- (Rs. Eight thousand only) to the complainant.*

*Sd/-
Jyoti Birbian,
JMJC, Hisar 12.12.2012.”*

Thereafter, the respondent-complainant preferred a revision before the Additional Sessions Judge, Hisar, challenging the aforesaid order dated 12.12.2012 passed by the trial Court and the revisional Court, vide impugned order dated 02.06.2014 allowed the revision only on the premise that as per the provisions of Section 138 of the Negotiable Instruments Act, when the notice was issued by the complainant to the present petitioner, the amount was not paid within a period of 15 days and, therefore, the payment of the amount by the petitioner-accused, subsequently, cannot be made a ground to discharge him.

The counsel for the petitioner has argued that at the time of issuance of notice of motion on 14.07.2014, the petitioner was directed to deposit an amount of Rs.15,000/- as against the outstanding amount of Rs.8,000/- which the petitioner had already deposited with the trial Court.

It is further argued that in fact, it has been admitted by the complainant in reply to the application for discharge that he has received an amount of Rs.1,00,000/- on 26.02.2005 and Rs.1,70,000/- on 05.04.2005.

The counsel for the petitioner submitted that the total amount of cheque was Rs.2,78,000/- and only Rs.8,000/- were to be paid to the petitioner during the time granted by the trial Court vide order dated 12.12.2012 and against that amount of Rs.8,000/- an amount of Rs.15,000/- has already been deposited by the petitioner in pursuance to the order dated 14.07.2014 passed by this Court.

In reply, the learned counsel for the complainant has submitted that since order dated 12.12.2012 amounts to discharge the accused, the revision before the Additional Sessions Judge was not maintainable and he could file only an appeal.

After hearing the learned counsel for the parties and going through the order dated 12.12.2012, vide which the application for discharge was allowed, it reveals that case was not disposed of finally, rather adjourned further for making the payment of said amount of Rs.8,000/- and, therefore, the order dated 12.12.2012 was not the final order and that being the position, the revision is maintainable.

Even otherwise, it is not disputed that the petitioner has paid the entire cheque amount and, therefore, the findings recorded by the revisional Court that since the petitioner has failed to make payment within a period 15

days from the date of issuance of legal notice under the Negotiable Instruments Act, trial Court was not justified in discharging the petitioner, in my opinion, is not correct and therefore not sustainable.

In view of the peculiar facts and circumstances of the case, the revision petition is allowed and order dated 12.06.2014 passed by the revisional Court is set aside. The respondent-complainant is granted permission to withdraw the amount of Rs.15,000/- deposited with the trial court

February 05, 2019
rekha sharma

(ARVIND SINGH SANGWAN)
JUDGE

<i>whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>