

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

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**CRR-1975-2008 (O&M)
DATE OF DECISION: 16.07.2019**

SUSHIL KUMAR

... Petitioner(s)

Versus

STATE OF PUNJAB AND ANR.

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Ms. Mansi Bansal, Advocate
for the petitioner(s).

Mr. Dhruv Dayal, Senior DAG, Punjab.

Mr. R.S. Bhatia, Advocate for respondent No.2.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has challenged the judgments of the Courts below whereby he has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default thereof, to further undergo rigorous imprisonment for a period of 15 days.

Learned counsel for the petitioner is confining his prayer in this petition to the sentence which may be reduced to the period already undergone. Learned counsel for the petitioner contends that the cheque issued by the petitioner for a sum of Rs.20,700/- on 15.01.2003 was stated to have been dishonoured on account of insufficient funds. The petitioner had obtained a loan of Rs.50,000/- from the respondent Bank on 13.11.2001 which was to be repaid in installments. She also contends that the petitioner has repaid the entire loan amount which includes the cheque amount to the

respondent Bank and the matter may be compounded. The petitioner is a Class IV employee in the Indian Railways. She has drawn my attention to the certificate issued by the Bank on 07.11.2009 wherein it is certified that the petitioner has paid the cheque amount.

Learned counsel for the complainant, however, states that the Bank had been caused loss on account of the delay in payment by the petitioner but he has not denied that the Bank has arrived at a compromise with the petitioner which is also reflected in the reply filed by the respondent-Bank.

Learned State counsel has referred to the custody certificate which is already on record. This certificate, which was issued on 14.05.2019, indicates that the petitioner had undergone total sentence of 1 month and 25 days.

Heard.

The allegations against the petitioner are that the cheque issued by the petitioner for a sum of Rs.20,700/- on 15.01.2003 was dishonoured on account of insufficient funds. The liability under the Act is primarily civil in nature. The petitioner has repaid the amount of the cheque in the year 2009. The petitioner had obtained a loan of Rs.50,000/- from the respondent Bank on 13.11.2001 which was to be repaid in installments. The petitioner has repaid the entire loan amount which includes the cheque amount to the respondent Bank qua which the Bank had also issued a certificate on 07.11.2009 wherein it is certified that the petitioner has paid the cheque amount. The petitioner has undergone total sentence of about 1 month and 25 days out of the sentence of six months.

The offence under Section 138 of the Act is compoundable even at this stage in the light of the judgment of the Supreme Court in case of **Damodar S. Prabhu vs. Sayed Babalal H., 2010 (5) SCC 663**. The petitioner has been convicted under Section 138 of the Act. As the dispute has been settled by the parties as the petitioner has repaid the entire loan amount which includes the cheque amount to the respondent Bank, it would be in the interest of justice, if the offence is compounded under Section 147 of the Act. The liability under Section 138 of the Act is civil in nature and in case the parties have arrived at compromise, the same should be accepted to give quietus to the litigation.

Consequently, the petition is allowed. The judgment and order of sentence dated 10.03.2008 passed by the trial Court and the judgment dated 12.09.2008 passed by the Appellate Court, are set aside. The petitioner is acquitted of the charges.

The petitioner is directed to pay compensation to the tune of 10% of the cheque amount to the Punjab Legal Services Authority.

16.07.2019

SwarnjitS

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No