

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

CRM-M-21002-2019
Date of decision: 05.12.2019

Paramjit Kaur and another

...Petitioners

Versus

Gurmukh Singh Sohal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Ramneek Vasudeva, Advocate
for the petitioners.

Mr. Gaurav Soni, Advocate
for respondent No. 1/complainant.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer made herein is for quashing of criminal complaint No.676 of 2016, filed under Sections 138 of the Negotiable Instruments Act (*for short 'N.I. Act'*) and the consequent proceedings including the judgment of conviction dated 14.08.2018 and order of sentence of the even date, passed by the trial Court, vide which the petitioners were held guilty for commission of offence punishable under Section 138 of the N.I. Act and were sentenced to undergo rigorous imprisonment for a period of two years and petitioner No. 1 was further directed to pay Rs. 25 Lakh as compensation to the complainant; on the basis of the compromise entered into between the parties. The appeal, preferred by the petitioners, is stated to be pending in the Court of learned Additional Sessions Judge, Rupnagar.

In brief, the facts of the case are that petitioners/accused entered

into an agreement to sell with the complainant vide agreement dated 05.07.2012 pertaining to land measuring 4 Kanal 7-1/2 Marla, Village Datarpur, Tehsil Morinda, District Ropar. The accused received Rs. 10 lakh as earnest money for the above said land from the complainant and promised to execute a sale deed in favour of the complainant on or before dated 29.07.2015. As per the terms and conditions of the agreement to sell, the complainant marked his presence on 29.07.2015 and waited for the accused till 5.00 PM for the execution of the sale deed in the office of Sub-Registrar/Tehsildar, Morinda District Rupnagar. Thereafter, the complainant approached the accused but the accused kept on delaying and later on the complainant came to know that the accused had sold out the said land to some other person. Subsequently, the complainant made a complaint before the Police Authorities and further the accused compromised the matter with the intervention of respectables and promised to pay back double the amount as per the terms and conditions stipulated in the agreement to sell. The above said compromise was reduced into writing and as per the compromise and in order to discharge the legal liability the accused issued two cheques i.e. cheque bearing No. 658001 and cheque bearing No. 657998 dated 15.06.2016 amounting to Rs. 10 lakh each. The accused assured the complainant that the above said cheque shall be encashed when the same will be presented before the bank. However, when the complainant presented the above said cheques before bank, the same were dishonoured and returned back with remarks "Funds Insufficient". On the request of the accused, the said cheques were agains presented for encashment and the accused also gave assurance that same will be honoured after waiting one month more.

Thereafter, the said cheques were again presented by the complainant on 30.08.2016 before his bank, however, the said cheques were received back by the complainant on 31.08.2016 with the remarks "Funds Insufficient". Thereafter, the complainant served a legal notice upon the accused on 30.09.2016, however, petitioners/accused did not respond to the same, hence, the present complaint was filed by the complainant.

During trial, complainant Gurmukh Singh appeared as CW1 and produced some documents i.e. copy of agreement Ex. C1, application for getting presence marked Ex. C2, copy of compromise Ex. C3, original cheques Ex. C4 and Ex. C5, copy of the bank memos Ex. C6 to Ex. C9, copy of legal notice Ex. C10 and postal receipts Ex. C11-A to Ex. C11-D, original registered cover of legal notice Ex. C12 to Ex. C13. Accused/petitioner No. 2 Baljit Singh absented during the course of trial and was declared P.O. vide order 10.04.2018.

Thereafter, complainant examined CW2 Gaurav Saini, SWO Grade A, Punjab and Sind Bank, Phase-5, Mohali, who stated that he has brought the original summons record pertaining to cheque No. 658001 dated 15.6.2016, cheque No. 657998 dated 15.6.2016 amounting to Rs. 10 lakh each. Copy of account statement is Ex.C14, copy of cheque returning register Ex. C15.

The statement of accused under section 313 of Cr.P.C was recorded where the entire incriminating evidence and circumstances were put to the accused, to which the accused denied and pleaded innocence and sought to lead evidence in defence but the accused has closed the same without leading any defence evidence.

The trial Court, thereafter, held the petitioners guilty for commission of offence punishable under Section 138 of the N.I. Act and convicted them as noticed above.

Aggrieved against the judgment of conviction and order of sentence, passed by the trial Court, the petitioners/accused preferred an appeal before the lower appellate Court, which is still pending consideration.

Vide order dated 17.10.2019, the parties were referred to Mediation and Conciliation Centre of this Court for recording of their statements. The parties appeared before the Mediator on 05.11.2019 and got recorded their statements, wherein the petitioners have stated that they have compromised the matter with the complainant and have already paid a lump-sum amount of Rs. 12 Lakh to the complainant by way of two demand drafts of Rs. 6 Lakh each. Respondent No. 1/complainant has also acknowledged the receipt of Rs. 12 Lakh from the petitioners and has stated before the Mediator that he has no objection if the complaint in question is quashed by this Court.

Learned counsel for the petitioners/accused as well as learned counsel for respondent No. 1/complainant are *ad idem* that the compromise has been arrived at between the parties on their own free will and without any pressure and the parties will remain bound by the terms and conditions of the said settlement/agreement.

After hearing both the parties and considering the fact that the parties have amicably settled their dispute before the Mediation and Conciliation Centre of this Court and no other litigation is pending between them, the permission is granted to compound the offence under the provisions

of Section 147 of the N.I. Act.

It has been held by Hon'ble Supreme Court in **2018 (1) R.C.R. (Criminal) 971, Sri Ashish Subba vs. Manoj Kumar Agarwal and another** that when the parties have amicably settled their dispute, the conviction and sentence of the accused, under Section 138 of the N.I. Act, can be set aside.

Accordingly, this petition is allowed and judgment of conviction dated 14.08.2018 and order of sentence of the even date, passed by the trial Court as well as the order dated 10.04.2018, vide which, petitioner No. 2 was declared a proclaimed offender, are set aside.

The appeal pending before the lower appellate Court shall be disposed of in view of the present order.

05.12.2019
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No