

CRM Nos.32925 & 32926 of 2017,
CRM No.23367 & 23368 of 2018 in/and
CRR No.3778 of 2017 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM Nos.32925 & 32926 of 2017,
CRM No.23367 & 23368 of 2018 in/and
CRR No.3778 of 2017 (O&M)

Date of decision : 21.05.2019

Sudarshan Goel

...Petitioner

Vs.

UT Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr.D.K.Singhal, Advocate for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CRM No.23367 of 2018

Application is allowed as prayed for subject to all just exceptions and filing of certified copy of Annexure P-10 and P-11 is exempted.

CRM No.32925 of 2017

Application is allowed as prayed for subject to all just exceptions and certified copy of compromise dated 2.2.2017, judgments dated 2.2.2017 e-mail dated 2.10.2017, SMS w.e.f. 4.9.2017 to 2.10.2017, statement of account dated 6.10.2017 and statement of account dated 1.9.2017 as Annexure P-1 to P-9 are taken on record and exemption is also granted from filing certified copy of judgment dated 16.12.2016, E-mail

**CRM Nos.32925 & 32926 of 2017,
CRM No.23367 & 23368 of 2018 in/and
CRR No.3778 of 2017 (O&M)**

-2-

dated 2.10.2017, SMS w.e.f. 4.9.2017 to 2.10.2017, statement of account dated 1.9.2017 (Annexure P-6 to P-9) is exempted.

CRM No.23368 of 2018 in/and CRR No.3778 of 2017

Having considered the statements made by the counsel for the petitioner, order dated 24.5.2018 is recalled.

It is the contention of the learned counsel for the petitioner that the petitioner was convicted and sentenced by the Judicial Magistrate Ist Class, Chandigarh on 16.12.2016 on a complaint filed under Section 138 of Negotiable Instruments Act, 1881 for a period of one year and the convict was also directed to pay compensation to the complainant an amount of Rs.46837/- i.e. equivalent to the cheque amount. On an appeal preferred by the petitioner, compromise was entered into between the petitioner and respondents No.2 & 3 which is apparent from the order dated 2.2.2017 passed by Additional Sessions Judge, Chandigarh (Annexure P-1). As per the compromise, in total an amount of Rs.4,15,000/- was to be paid by the petitioner to private respondents No.2 and 3. Before the expiry of the said period, as per the schedule fixed in the compromise learned lower Appellate Court passed an order dismissing the appeal dated 21.9.2017 whereas the period for payment of the last instalment was upto 30.9.2017. He contends that within the time fixed in the compromise, the total amount due towards the petitioner as per the compromise stood deposited in the account of the private respondents 2 and 3. In support of his contention, he placed reliance upon account statement issued by the State Bank of India, Sector 10-D Branch, Chandigarh, (Annexure P-8). His further assertion is that factum of

receipt of the amount by private respondents No.2 and 3 stood acknowledged in the mail which has been issued on payment by the private respondents and copy thereof has been appended as Annexure P-6.

He, on the basis of above submissions, contends that the petitioner having adhered to the terms and conditions of the compromise within the time stipulated, should have been given an opportunity to fulfill the commitment as per the compromise within the time stipulated therein which the learned lower Appellate Court took into consideration and passed the order dated 21.9.2017 whereas the last date for fulfilling the conditions of the compromise was 30.9.2017. He thus contends that the conviction and sentence of the petitioner deserves to be set aside.

I have considered the submissions made by learned counsel for the petitioner and with his assistance, have gone through the record of the case.

As per the compromise, which has been entered into between the parties in the appeal preferred by the petitioner, as is reflected in the order dated 2.2.2017 (Annexure P-1) passed by the learned Appellate Court, Rs.4,15,000/- including TDS had to be paid by the petitioner to the private respondents No.2 and 3 by 30.9.2017. The said compromise period should have been taken into consideration by the Appellate Court and therefore, should have given the petitioner an opportunity to fulfill the said terms of the compromise. Instead of doing so, the Appellate Court has proceeded to dismiss the appeal on 21.9.2017 without taking into consideration the said aspect. The account statement (Annexure P-8), the mail (Annexure P-6)

**CRM Nos.32925 & 32926 of 2017,
CRM No.23367 & 23368 of 2018 in/and
CRR No.3778 of 2017 (O&M)**

-4-

clearly indicate that the payments due towards the petitioner as per the compromise have been made to the private respondents No.2 and 3 within the time stipulated in the compromise as recorded in the order dated 2.2.2017 (Annexure P-1).

In view of the above facts, it is apparent that terms of the compromise have been fulfilled by the petitioner, therefore, conviction and sentence of the petitioner cannot sustain and accordingly as per the compromise which has been entered into and keeping in view the provisions of Section 147 of the Negotiable Instruments Act, 1881, the offence is compoundable and therefore, the conviction and sentence of the appellant is set aside and the appellant is acquitted of the charge framed against him under Section 138 of the Negotiable Instruments Act.

The revision petition is allowed in the above terms.

CRM No.32926 of 2017

In view of the order passed in the revision petition, this application has become infructuous.

Ordered accordingly.

21.5.2019
Meenu

**(AUGUSTINE GEORGE MASIH)
JUDGE**

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