In the High Court of Punjab and Haryana at Chandigarh

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CRM-18733-2019 in/and
CRR-1362-2018 (O & M)
Date of Decision: October 29, 2019

M/S JASWINDRA PRODUCTS & ANR .....PETITIONERS

VERSUS

STATE OF PUNJAB AND ANR ....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr.Vikas Bali, Advocate for the petitioners.

Mr. Dhruv Dayal, Senior DAG, Punjab.

Mr. Tribhawan Singla, Advocate for respondent No.2.

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<u>ANUPINDER SINGH GREWAL, J (ORAL)</u>

The petitioners have challenged the judgments and orders of the Courts below whereby the petitioners have been convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5,000/-.

The allegations against the petitioners are that 08 cheques were issued by him for a total amount of ₹7,00,817/- in July, 2015 had been dishonoured on account of insufficient funds.

Learned counsel for the petitioners and respondent No.2 upon instructions from their respective clients, who are present in Court, are ad idem that the matter has been settled for a total amount of ₹10,10,000/-. The petitioner has already paid a sum of ₹3 lacs in April, 2018. Today, he has handed over a demand draft for a sum of ₹3 lacs and ₹60,000/- in cash to the complainant.

Learned counsel for the petitioners contends that the petitioners shall pay an outstanding amount of ₹3,50,000/- by 31.01.2020. He also prays for compounding of the offence in terms of the judgment of the Supreme Court in the case of **Damodar S. Prabhu vs. Sayed Babalal H., 2010 (5) SCC 663.** He also contends that the financial condition of the petitioners is not good and he has exhausted all his resources for making payment to the complainant, therefore, the cost be reduced.

Heard.

The allegations against the petitioners are that 08 cheques issued by him were dishonoured on account of insufficient funds. The liability under the Act is primarily civil in nature.

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.** (supra). The petitioner has been convicted under Section 138 of the Act. The dispute has been settled by the parties as the petitioner has made the part payment, therefore, 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 21.04.2017 passed by the trial Court and judgment dated 06.04.2018 passed by the Appellate Court, are set aside.

The petitioners are acquitted of the charges framed against them. They be released forthwith, if not required in any other case.

The petitioners shall deposit ₹20,000/- as costs with the Punjab Legal Services Authority within a month.

In the event of any party resiling from the compromise, it shall be open to either of them to prefer an application in this regard.

(ANUPINDER SINGH GREWAL)
JUDGE

October 29, 2019
A.Kaundal

Whether speaking/ reasoned : Yes/No
Whether Reportable : Yes/No