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IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

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CRR No.4679 OF 2017(O&M)

Date of Decision: 25.03.2019

Rupinder Singh

.....Petitioner

versus

Mohinder Singh

.....Respondent

CORAM HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present Mr.H.S.Bhullar, Advocate for the petitioner.
Mr.G.L.Bajaj, Advocate for respondent.

MAHABIR SINGH SINDHU, J (ORAL)

Present revision petition has been filed under Section 401 Code of Criminal Procedure, 1973, for short 'Cr.P.C.' against the impugned judgment dated 02.11.2017 of learned Additional Sessions Judge, Faridkot, vide which an appeal filed by the petitioner has been dismissed and the judgment of conviction as well as order of sentence dated 20.08.2016, passed by learned Judicial Magistrate Ist Class, Faridkot (for short 'JMJC'), thereby convicting him for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and sentencing for imprisonment of one year along with fine of Rs.10,000/- with a default clause to further undergo imprisonment for 30 days, has been affirmed.

Brief facts of the case are that petitioner borrowed a sum of Rs.1,00,000/- from the respondent-complainant in the month of September 2014 with assurance that on demand, said amount will be returned. The complainant demanded his money back and the petitioner, in order to discharge his legal liability issued a cheque No.213924 dated 10.01.2015 drawn on HDFC Bank, Branch Faridkot. The above cheque was presented for encashment but the same was dishonoured on 10.01.2015,

with the remarks "*Funds Insufficient*". Consequently, a statutory legal notice dated 17.01.2015 was issued to the petitioner but of no effect and that led to the filing of complaint under the Act.

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On the basis of the preliminary evidence led by the respondent, the petitioner was summoned to face trial for the commission of offence punishable under the Act, and thereafter, notice of acquisition was served to him, but he pleaded not guilty and claimed trial.

In order to prove his case, the respondent -complainant stepped into the witness box as CW1 and tendered his duly sworn affidavit Ex.CW1/A and also proved the original cheque in question as Ex.C1, Memo of Bank as Ex.C2, Notice as Ex.C3 and postal receipts as Ex.C4 & Ex.C5 .

After closure of the evidence of the respondent, statement of petitioner under Section 313 Cr.P.C was recorded, wherein he pleaded complete innocence by alleging false implication.

After hearing both parties and perusal of the record, the petitioner was convicted and sentenced by learned JMJC vide judgment and order dated 20.08.2016 to undergo imprisonment for one year along with fine of Rs.10,000/- and in default, to further undergo imprisonment for a period of 30 days.

An appeal preferred against the above judgment of conviction and order of sentence was also dismissed by learned Additional Sessions Judge while passing the impugned judgment dated 02.11.2017, hence the present petition.

During the pendency of the revision petition, this Court, on 25.01.2018, granted interim bail to the petitioner on the ground that compromise has been entered into between the parties and he has paid an

amount of Rs.55,000/- in lump sum against full and final settlement to the complainant in addition to Rs.10000/- already paid before the learned Appellate Court. The matter was also referred to Mediation and Conciliation Centre of this Court on 28.01.2019 and 05.02.2019 for amicable settlement of the dispute between the parties and report dated 28.02.2019 of Mediator has been received to the effect that matter stands compromised.

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Learned counsel for the respondent has not raised any objection in case the prayer of the petitioner is accepted by this Court and conviction as well as sentence recorded by both the Courts below is set aside.

Heard learned counsel for the parties and perused the paper book carefully.

Perusal of paragraph no.4 of the compromise attached with the report of Mediator reveals that on certain terms and conditions parties have voluntarily as well as with their free consent arrived at a settlement which is acceptable to both sides.

Concededly, Section 147 of the Act postulates that every offence punishable under this Act is compoundable and it is well settled principle of law that once the erring party has made the payment of entire amount, then both the parties with their free consent, are entitled to compound the offence and the same is no more res-integra. The Hon'ble Supreme Court in the case of **K.Subramanian Vs. R.Rajathi Represented by P.O.A.P.Kaliappan, (2010) 15 Supreme Court Cases 352** has held that under such circumstances, the parties should be permitted to compound the indicated offence and the relevant para No. 8 thereof reads as under: -

“8. Having regard to the salutary provisions of Section 147 of the Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.”

It is proved on record that the parties have compromised the matter and the petitioner-convict has already made the entire payment.

Thus, it would be in the interest of justice that parties be allowed to compound the offence to enable them to live peacefully and in harmony. Even otherwise, there is no legal impediment in this case and the same is covered by the ratio of law laid down in the judgment of Hon'ble Supreme Court in **K. Subramanian's case (supra)**.

In view of the above, approval is granted for compounding the offence under Section 138 of the Act.

Consequently, the present revision petition is allowed and the impugned judgment dated 02.11.2017 of learned Additional Sessions Judge, Faridkot, while upholding the judgment of conviction as well as order of sentence dated 20.08.2016 passed by learned JMIC, are hereby set aside and the petitioner is acquitted of the charge framed against him.

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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No