

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

**Criminal Revision No.1848 of 2018 (O&M)
Date of Decision : 02.07.2019**

Rekha Rani @ Dimpy

.....Petitioner

Versus

Vikas Kumar and another

...Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. Dinesh Nagar, Advocate for the petitioner.

Mr. B.S.Bali, Advocate for respondent No.1.

Mr. Venu Gopal Jauhar, Sr. Deputy Advocate General, Punjab
for respondent No.2.

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MAHABIR SINGH SINDHU, J. (Oral)

Present revision petition has been filed against the impugned judgment dated 21.03.2018, passed by learned Additional Sessions Judge, S.A.S. Nagar (Mohali), vide which, appeal filed by the petitioner against the judgment and order of sentence dated 19.09.2016 of learned Judicial Magistrate 1st Class, Dera Bassi, whereby, she was convicted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N.I. Act'*) and sentenced to undergo rigorous imprisonment for a period of one and half years with fine of ₹ 5000/- with default clause, to further undergo imprisonment for one month, has been dismissed.

This Court, while issuing notice of motion on 25.05.2018, passed the following order:-

*“ The petitioner has challenged the orders of the Courts
below whereby the petitioner has been convicted under Section*

138 of the Negotiable Instruments Act and has been sentenced to undergo rigorous imprisonment for one and a half years and to pay a fine of ₹ 5,000/- and in default of payment thereof, undergo further rigorous imprisonment for one month.

Learned counsel for the petitioner says that the matter has been compromised with the complainant for an amount of ₹ 1,15,000/-. He further says that an amount of ₹ 90,000/- has been paid to the complainant and only ₹ 25,000/- remains outstanding. He has referred to the copies of the receipts which have been attached as Annexure P1 (collectively). He also contends that the petitioner is a lady with two minor children and she is in custody for over two months.

Issue notice of motion to the respondents returnable on 16.08.2018.

In the meantime, the sentence of the petitioner shall remain suspended till the next date of hearing. She shall be released on bail on her furnishing requisite bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, S.A.S. Nagar (Mohali). ”

Thereafter, on 29.11.2018, the following order was passed by this Court:-

“ As per office report, respondent No.1 could not be served as he is not residing at the given address.

Let respondent No.1 be served for 21.01.2019, through registered cover and dasti as well on furnishing his fresh address, requisite number of copies of the petition, registered cover, process fee and incidental expenses, if any, within two weeks.

The petitioner is also directed to deposit 15% of the cheque amount in terms of the guidelines laid down in “Damodar S. Prabhu v. Sayed Babalal H.”, 2010 (15) SCC 663.

In case of non-compliance of this order in letter and spirit, the petition shall be dismissed for want of prosecution.

Today, this Court has been apprised that in pursuance of the above order, 15% of the cheque amount i.e. ₹ 44,100/- has been deposited before the Punjab State Legal Services Authority, S.A.S. Nagar, vide receipt No.302331 dated 27.03.2019. Photocopy of the same is retained on the file.

Learned Counsel for respondent No.1 has duly acknowledged that his client has received the cheque amount in entirety and there is no claim left against the petitioner.

Heard learned Counsel for the parties and perused the paper-book.

It is not in dispute that Section 147 of the Act postulates that every offence, punishable under this Act, shall be compoundable. It is now well settled principle of law that once the erring party has made the payment of entire amount, then, with their consent, they are entitled to compound the offence and the same is no more *res integra*.

The Hon'ble Supreme Court in case '**K. Subramanian Versus 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. ”

Since it is duly established on record that both sides have compromised the matter and the petitioner/convict has already made the entire payment along with 15% additional amount in favour of Legal Services Authority as per law laid down by the Hon'ble Supreme Court in case '**Damodar S. Prabhu Versus Sayed Babalal H., 2010(5) SCC 663**, therefore, it would be in the interest of justice that parties be allowed to compound the offence to enable them to live in peace in future. Even otherwise, there is no legal impediment in this case for compounding of the matter and the same is covered by the ratio of law laid down in the judgments of the Hon'ble Supreme Court in the cases, referred above.

In view of the compounding of offence as contemplated under Section 147 of the Act and Section 320(8) Cr.P.C., the present revision petition is allowed. The impugned judgments of conviction and orders of sentence, passed by both the Courts below, are set aside and the petitioner/convict is acquitted of the charges.

July 02, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes