

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

**CRR No.2787 of 2018 (O&M)
Date of decision: 18.11.2019**

Ajaib Singh

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navmohit Singh, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Arvind Bansal, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this revision petition is for setting-aside the judgment of conviction dated 18.07.2016 vide which the petitioner was held guilty under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') and the order of sentence dated 19.07.2016 vide which he was sentenced to undergo rigorous imprisonment for a period of 01 year and to pay the compensation of Rs.50,000/- to the complainant as well as the judgment dated 09.08.2018 passed by the Lower Appellate Court vide which the appeal filed by the petitioner was dismissed.

Brief facts of the case are that on 15.01.2015 the petitioner/accused has borrowed an amount of Rs.25,000/- from the complainant at Cheeka with the assurance of repayment of the same on demand within a period of three months as the accused and the

complainant were known to each other. Thereafter, on the asking of the complainant for repayment of the said borrowed amount, the accused has issued a cheque dated 10.04.2015 bearing No.572829 for Rs.25,000/- from his account to discharge his legally enforceable liability of repayment of the said borrowed amount. The complainant presented the said cheque to his banker Oriental Bank of Commerce, Cheeka on 16.05.2015 for encashment of the same but the same was dishonored with the remarks "*Funds Insufficient*" vide memo dated 16.05.2015. The complainant, thereafter, served a legal notice dated 27.05.2015 upon the accused through his counsel, which was received back with the endorsement of '*refusal*'. Thereafter, the complainant has filed the complaint before the trial Court.

The complainant, in his preliminary evidence, himself appeared as CW1 and tendered his affidavit Ex.PW1/A and after hearing and going through the preliminary evidence, the accused was ordered to be summoned under Section 138 of the N.I. Act to face the trial.

On appearance of the accused and after going through the allegations levelled against the accused and finding that the accused issued the cheque bearing No.572829 dated 10.04.2015 for Rs.25,000/- in favour of the complainant, which was dishonored due to reason "*Funds Insufficient*" as per memo dated 16.05.2015, the notice of accusation under Section 138 of the N.I. Act was served upon the accused vide order dated 26.10.2015, to which the accused did not plead guilty and claimed trial.

In order to prove the case, the complainant examined

Bhushan Kumar, Clerk of Sh. S.P. Jindal, Advocate as CW1 whereas the complainant himself appeared as CW2 and tendered his affidavit Ex.CW2/A wherein he has reiterated the version given in the complaint and closed the evidence on 10.06.2016 vide separate statement.

After conclusion of the evidence of the complainant, the statement of petitioner/accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the complainant produced against him, was put to him to tender explanation for the same. The petitioner/accused denied all the allegations of the complainant. The accused opted to lead the defence evidence but did not lead any evidence and closed the same on 18.07.2016.

The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, convicted the petitioner/accused under Section 138 of the N.I. Act and sentenced him to undergo rigorous imprisonment for a period of 01 year and to pay the compensation of Rs.50,000/- to the complainant.

Feeling dissatisfied with the judgment of conviction dated 18.07.2016 and order of sentence dated 19.07.2016, the accused/petitioner has preferred an appeal before the Lower Appellate Court and the same was also dismissed vide judgment dated 09.08.2018. Hence, the petitioner/accused has preferred the revision petition before this Court.

On 27.08.2018, the counsel for the petitioner has submitted before this Court that the petitioner is ready to pay the cheque amount of Rs.25,000/- to the complainant/respondent No.2 – Ashish Kumar and

has also placed on record the photocopy of the demand draft dated 24.08.2018 and thus, the sentence of the petitioner was suspended vide order of even date.

Thereafter, on 31.10.2018, at the request of counsel for the parties, the matter was referred to the Mediation and Conciliation Centre of this Court for exploring the possibility of some amicable settlement and vide order dated 14.11.2019, counsel for the petitioner has argued that he has already paid the cheque amount of Rs.25,000/- in compliance of the order dated 27.08.2018 and is ready to pay the additional amount of Rs.15,000/- as compensation.

Counsel for the petitioner has submitted that the dispute of which the present petition is an off-shoot has been settled between the parties.

Counsel for the State assisted by counsel for respondent No.2, has not disputed the factual position. It is further submitted that the petitioner is not involved in any other case.

Counsel for the petitioner has paid the another amount of Rs.15,000/- (in cash) to the counsel for the complainant/respondent No.2, today in the Court.

At this stage, counsel for the parties are *ad idem* that in view of the fact that the petitioner has paid the cheque amount of Rs.25,000/- and over and above, the another amount of Rs.15,000/- (in cash) to the complainant/respondent No.2, the offence may be compounded.

After hearing the counsel for the parties, I find merit in the

present revision petition. In “*Sube Singh and another vs State of Haryana and another*”, 2013 (4) RCR (Criminal) 102, the Division Bench of this Court has held that *even after conviction, if the parties have settled the dispute amicably and have decided to live in peace and harmony, this Court, in exercise of powers under Section 482 Cr.P.C, can compound the offence.*

Since the petitioner has paid the disputed cheque amount of Rs.25,000/- to the complainant/respondent No.2 and over and above the same, has also paid another amount of Rs.15,000 (in cash) today in the Court and in view of the fact that the petitioner/accused is not involved in any other case; he has not misused the concession of suspension of sentence and the matter stood compromised between the parties as well as in view of the law laid down by the Hon'ble Division Bench of this Court in *Sube Singh and another's case (supra)*, this criminal revision petition is ***partly allowed*** while upholding the judgment of conviction and the sentence awarded to the petitioner is reduced to the period already undergone by him.

With the aforesaid modifications, the present revision petition is disposed of.

The petitioner be released forthwith, if he is not required in any other case.

18.11.2019
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(ARVIND SINGH SANGWAN)
JUDGE

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