

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

CRR-3836-2018 (O&M)
Date of decision : 20.12.2019

Suba Singh

...Petitioner

Versus

Nirmal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. L.S. Sidhu, Advocate for the petitioner.

Mr. N.K. Malhotra, Advocate for respondent No.1.

Mr. Surinder Pal Singh Tinna, Additional A.G. Punjab.

ANIL KSHETARPAL, J. (ORAL)

The petitioner is in the revision petition against the judgment of conviction passed by the learned Sub Divisional Judicial Magistrate, Sardulgarh while allowing complaint under Sections 138 and 142 of the Negotiable Instruments Act, 1881. The petitioner has been sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of ₹5000/-. Appeal against the aforesaid judgment was dismissed.

Cheque amount is ₹7,00,000/-.

On consideration of the matter, on 22.11.2018, following order was passed:-

“CRR-3836-2018

Let photocopies of the lower Courts' record be

requisitioned for 28.11.2018.

CRM-41248-2018

Prayer made in the application for suspension of sentence awarded to the applicant/petitioner during the pendency of the revision petition.

Learned counsel for the applicant/petitioner, while arguing on the point of suspension of sentence, contended that applicant/petitioner is ready to deposit the amount of cheque i.e. Rs.7,00,000/- along with 15% charges to be deposited with the Punjab State Legal Services Authority at Chandigarh within a week's time and sentence awarded to the applicant be suspended during the pendency of the revision petition.

Let the applicant/petitioner to deposit a sum of Rs.8,00,000/- with the Registry of this Court within a week's time.

List along with the main case on the date fixed therein.”

On 28.11.2018, after noticing that the petitioner has deposited a sum of ₹8,00,000/- with the Registry of this Court, notice of motion was issued.

Learned counsel for respondent No.1 does not dispute that an amount of ₹8,00,000/- has been deposited. However, he submits that the respondent-complainant is not consenting to the compounding of the offence.

Compounding of the offence under Section 138 of the Negotiable Instruments Act, 1881, without the consent of the complainant has been drawing attention of the Courts from time to time and Hon'ble the Supreme Court in the case of **Damodar S. Prabhu Vs. Sayed Babalal H.,**

(2010) 5 SCC 663, had considered this aspect in detail and laid down certain guidelines. Subsequently, once again in the case of *M/s Meters and Instruments Private Limited and another Vs. Kanchan Mehta, AIR 2017 SC 4594*, it has been held that since offence under Section 138 of the Negotiable Instruments Act, primarily civil wrong, therefore, the Court can order compounding unilaterally as the object of the provision is primarily compensatory and punitive element is mainly with the object of enforcing the compensatory element.

Keeping in view the aforesaid facts, offence is permitted to be compounded.

Respondent-claimant shall be entitled to withdraw the amount deposited with the Registry of the Court.

Disposed of, accordingly.

20.12.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No