

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

1. CRR No.897 OF 2018(O&M)

Vinod Kumar DubeyPetitioner

versus

M/s Sarvottam Tubewell & Engineers through Prop. and another

.....Respondents

2. CRR NO.907 OF 2018(O&M)

Vinod Kumar DubeyPetitioner

versus

M/s Sarvottam Tubewell & Engineers through Prop. and another

.....Respondents

3. CRR NO.921 OF 2018(O&M)

Date of Decision:13.03.2019

Vinod Kumar DubeyPetitioner

versus

M/s Sarvottam Tubewell & Engineers through Prop. and another

.....Respondents

CORAM HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present Mr.Padamkant Diwedi, Advocate for the petitioner in all
revision petitions.
Mr. Deepak Gupta, Advocate
for the applicant in all revision petitions.
Mr. Mani Ram, Advocate for respondent no.1
in all revision petitions.
Mr. Yashwinder Singh, DAG, Haryana.

Since all the above mentioned revision petitions are between the same parties and identical facts are involved, therefore, being disposed off by this common order.

Aforementioned revision petitions have been filed against the impugned judgment dated 28.02.2018, passed by learned Additional Sessions Judge, Faridabad affirming the judgments and orders dated 20/25.02.2015, of learned Judicial Magistrate Ist Class, Faridabad (for short 'JMJC'), in all cases, whereby the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and sentenced to undergo rigorous imprisonment for one year along with amount of compensation of Rs.4,42,500/-, Rs.8,85,000/- and Rs.13,27,500/- in three cases to be paid to the complainant – respondent no.1 within one month from the date of passing of the order and in default, he was further sentenced to undergo simple imprisonment for a period of three months.

With the consent of parties, facts have been noticed from CRR No.897 of 2018.

Petitioner approached respondent no.1/ complainant in the month of November, 2009 with a memorandum of undertaking that he will take some boring machinery with proper convenience system on rent of Rs.2,95,000/- per month, and on account of failure to fulfill his obligation, an amount of Rs.17,70,000/- became outstanding against him. The complainant- respondent No.1 demanded the money and after admitting his liability, petitioner issued three cheques bearing No.678302 dated 26.11.2009 for Rs.50,000/-, cheque no.678303 dated 26.11.2009 for Rs.50,000/-, both drawn on “Standard Chartered Bank” and cheque

No.077031 dated 14.11.2009 for Rs.1,95,000/- drawn on “Axis Bank Ltd. MAMTA
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integrity of this document Delhi”, total amounting to Rs.2,95,000/- in the present case. The above cheques were presented for encashment by the complainant but the same were dishonoured with the remarks “payment stopped by drawer”. Consequently, a statutory legal notice dated 03.05.2010 was issued to the petitioner but of no effect and that led to the filing of the complaint under Section 138 of the Act.

On the basis of the preliminary evidence led by the respondent no.1/ complainant, the petitioner was summoned to face trial for the commission of offence punishable under Section 138 of the Act, and thereafter notice of accusation was served upon him but he pleaded not guilty and claimed trial.

In order to prove the case, the complainant – respondent no.1 stepped into the witness box as CW1, examined Satish Mittal as CW2 and produced the original cheques in question as Ex.C1 to Ex.C3, return memos Ex.C4 to Ex.C6, also tendered in evidence other documents from Ex.C7 to C9 as well as Mark 1 to 7 and closed his evidence.

After closure of the evidence of the complainant, statement of petitioner was recorded under Section 313 Cr.P.C, wherein he pleaded complete innocence alleging false implication. In defence, petitioner appeared himself as DW1 and produced certain documents.

After hearing both parties and perusal of the records, the petitioner was convicted and sentenced vide judgment and order dated 20/25.02.2015 passed by learned JMIC under Section 138 of the Act to undergo rigorous imprisonment for one year along with compensation amount of Rs.4,42,500/-, to be paid to the complainant – respondent no.1

within one month from the passing of the order and in default to further
undergo simple imprisonment for a period of three months.

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The above judgment of conviction and order of sentence was affirmed by learned Additional Sessions Judge, while passing the impugned judgment dated 28.02.2018, hence the present petition.

During the pendency of the revision petition, this Court, vide order dated 19.03.2018, granted interim bail to the petitioner on the ground that he is ready to settle the dispute with respondent No.1/ complainant. Consequently, the matter was also referred to Mediation and Conciliation Centre of this Court on 04.04.2018 for amicable settlement of the dispute between the parties and report dated 16.04.2018 of Mediator has been received to the effect that the matter stands compromised.

Learned counsel for the respondent has not raised any objection in case the prayer of the petitioner is accepted by this Court.

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

Perusal of paragraph no.6 of the Settlement Agreement attached with the report of Mediator reveals that on certain terms and conditions after receiving an amount of Rs.14,00,000/- as full and final payment against the entire claim of respondent No.1, petitioner has completely discharged his liability and the same is duly acknowledged by respondent No.1 and now parties do not want to continue with the litigation any further.

It is not in dispute that 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

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Supreme Court in case **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 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 both sides have compromised the matter with their free consent and the petitioner-convict has already made the entire payment to respondent No.1.

Thus, it would be in the interest of justice that parties be allowed to compound the offence to enable them to live in peace and 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. Since the parties have already settled the matter and further jointly stated that at present, financial condition of the petitioner is very poor, therefore, keeping in view the law laid down by Hon'ble Supreme Court in **Madhya Pradesh State Legal Authority v. Prateek Jain and another, (2014) 10 SCC 690**, all the three revision petitions are allowed and the impugned judgments passed by the Courts below are set aside and the petitioner in all cases is acquitted of the

charge framed against him, subject to payment of costs of Rs 5000/- in each case, to be deposited before the High Court Legal Services Committee within four weeks from the receipt of certified copy of this order.

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(MAHABIR SINGH SINDHU)
JUDGE

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