

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

1. CRR No. 4216 of 2017 (O&M)

Mamta

...Petitioner

Versus

State of Punjab and another

...Respondents

2. CRR No. 4248 of 2017 (O&M)

Mamta

...Petitioner

Versus

State of Punjab and another

...Respondents

Date of decision: 13.01.2020

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Vaibhav Narang, Advocate
for the petitioner in both the petitions.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Anil Kumar, Advocate for
Mr. S. K. Arya, Advocate
for respondent No. 2 in both petitions.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above noted two petitions
as they are similar in nature.

Prayer in the first petition is for setting aside the judgment of
conviction dated 12.05.2017 and order of sentence of the even date, passed
by the trial Court, vide which, the petitioner was held guilty for commission

of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*) in **Complaint Case No. 1062 of 2014** and was sentenced to undergo rigorous imprisonment for a period of one year; as well as the judgment dated 29.09.2017, vide which, the appeal filed by the petitioner was dismissed by the lower appellate Court.

Prayer in the second petition is for setting aside the judgment of conviction dated 12.05.2017 and order of sentence of the even date, passed by the trial Court, vide which, the petitioner was held guilty for commission of offence punishable under Section 138 of the N.I. Act in **Complaint Case No. 1914 of 2014** and was sentenced to undergo rigorous imprisonment for a period of one year; as well as the judgment dated 29.09.2017, vide which, the appeal filed by the petitioner was dismissed by the lower appellate Court.

Brief facts of the case are that petitioner/accused took a friendly loan of Rs. 1,90,000/- and Rs. 1,65,000/- from complainants Geetanjali and Vishal Kumar, respondent No. 2 in both petitions, and issued two cheques bearing No. 385508 dated 27.01.2014 and 385509 dated 13.02.2014, drawn on State Bank of Patiala, Branch Majitha Road, Amritsar for discharge of her legal debt and liability with an assurance that the said cheques will be honoured as and when presented before the Bank. However, the said cheques, on presentation before the bank, were returned with the remarks “Opening Balance Insufficient” and “Funds Insufficient”. Thereafter, the complainants served legal notice upon the petitioner/accused but despite the service of legal notice, petitioner/accused failed to make the payment to complainants. Hence, the aforesaid complaints were filed by the complainants under Section 138 of the N.I. Act, in which, the petitioner

stood convicted by the trial Court and his appeals were dismissed by the lower appellate Court, as noticed above. Hence, the present revision petitions.

During the pendency of the present petitions, the sentence of the petitioner was suspended, vide order dated 15.12.2017, passed separately in both petitions.

On 03.07.2019, noticing the fact that there was some possibility of an amicable settlement between the parties, they were directed to appear before the Mediation and Conciliation Centre of this Court.

In pursuance to the aforesaid direction, the parties appeared before the Mediation and Conciliation Centre of this Court and a settlement/agreement dated 02.09.2019 has been arrived at between them. Clause 6 of the said settlement/agreement reads as under:

“6. The following settlement has been arrived at between the Parties hereto:

a) The first party has agreed to make a payment of Rs.1,00,000/- (Rupees One Lac only) to the second party as full and final payment towards the settlement of cheque dispute between them, which the second party has agreed and accepted the same.

b) It has been agreed between both the parties that on 04.09.2019 i.e. the next date of hearing, counsel for both the parties shall make a joint request to the Hon'ble Court to adjourn the case to any date in the middle of December, 2019. It has further been agreed that on the next date fixed in the month of December, 2019 by the Hon'ble High Court, the first party along with her husband shall hand over a demand draft in the name of the second party for a sum of Rs.1,00,000/- (Rupees One Lac only) before the Hon'ble High Court.

c) It has also been agreed between both the parties that the aforesaid cheque bearing No.385508 dated 27.01.2014 drawn on State Bank of Patiala, Opposite Guru Nanak Dev Hospital, Majitha Road, Amritsar, is the only cheque issued by the first party to the second party. The second party undertakes that in case any other cheque presently not in her knowledge with regard to the same Savings Bank Account No.55147817212 signed by the present petitioner is traced by her in future, she shall not file any Criminal Complaint and shall also not take any civil action in any Court of Law alleging liability of the first party and the second party shall return the same to the first party. The payment of Rs.1,00,000/- which is currently being made to her, shall be full and final settlement of all claims with regard to all transactions between both the parties up till today.

d) It has been mutually agreed between the parties that the second party shall have no objection if Criminal Revision Petition No.4216 of 2017 filed by the first party is allowed by the Hon'ble High Court in light of the present settlement/agreement. The second party undertakes to make a statement in the Hon'ble Court with regard to the same on the final date fixed.

e) The parties further undertake not to initiate or institute any unwanted litigation against each other and their family arising out of the matter in dispute. The parties further undertake not to use any document etc. against each other which have been left in their possession after this date of agreement or used as an evidence against each other in Court of Law.

f) As per knowledge of both the parties, there is no other pending litigation between the parties qua the present dispute. It has been further agreed between the parties that in case of coming into knowledge of any

petition or case filed by any of the parties against other, the same shall be withdrawn by either of the party who has filed it.

g) This compromise has been arrived at between the parties without any pressure, undue influence or misrepresentation and both the parties have agreed to abide by the terms and conditions of the agreement. Both the parties shall be bound with the terms and conditions of this compromise.”

Today, the matter has been taken up and learned counsel for the petitioner has handed over a demand draft of Rs. 80,000/- favouring Vishal Kapoor (respondent No.2/complainant in CRR-4248-2017) and another demand draft of Rs. 1,00,000/- favouring Geetanjali (respondent No. 2/complainant in CRR-4216-2017) to learned counsel for respondent No. 2/complainant, who has handed over the same to the complainants, who are present in Court. Photocopies of the said demand drafts are taken on record.

Learned counsel for respondent No. 2/complainants has acknowledged the fact that as per the settlement, arrived at between the parties, the entire payment has been received by the complainants and nothing is due towards petitioner.

In view of the above, it is submitted by learned counsel for the parties that the present petitions may be allowed and the offence may be compounded in view of the provisions of Section 147 of the N. I. Act.

After hearing both the parties and considering the fact that the parties have amicably settled their dispute and no other litigation is pending between them, the permission is granted to compound the offence under the provisions of Section 147 of the N.I. Act.

It has been held by Hon'ble Supreme Court in **2018 (1) R.C.R. (Criminal) 971, Sri Ashish Subba vs. Manoj Kumar Agarwal and another** that when the parties have amicably settled their dispute, the conviction and sentence of the accused, under Section 138 of the N.I. Act, can be set aside.

Accordingly, these revision petitions are allowed and judgment of conviction dated 12.05.2017 and order of sentence of the even date as well as the judgment dated 29.09.2017, passed separately by the trial Court and lower appellate Court respectively in both the aforesaid complaints, are hereby set set aside.

However, the parties shall remain bound by the terms and conditions of the aforesaid settlement arrived at between them.

A photocopy of this order be placed on the file of other connected case.

13.01.2020

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No