

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

Date of decision-24.01.2020

1. CRR-919-2018 (O&M)

Balpreet Singh

Vs.

...Petitioner

Harjeet Kaur

...Respondent

2. CRR-925-2018 (O&M)

Balpreet Singh

Vs.

...Petitioner

Harjeet Kaur

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Veneet Sharma, Advocate for the petitioner.

Mr. Upender Prasher, Advocate for the respondent.

MANOJ BAJAJ, J.

Petitioner has filed the above mentioned two revision petitions to challenge the separate appellate Court judgments dated 27.04.2015, whereby the judgments of conviction and orders of sentence recorded by the trial Court on 10.09.2014, in two separate complaints under Section 138 Negotiable Instruments Act, 1881, were upheld.

As the petitions are between the same parties, pertaining to the issuance of two different cheques by the petitioner in favour of complainant (respondent), therefore, both these petitions are decided by this common decision. The facts in brief are being extracted from CRR-919-2018.

As per the complainant, two cheques bearing No. 037078 dated 19.07.2011 amounting to Rs.2 lacs and cheque bearing No.057107 dated 23.08.2011 for a sum of Rs.5 lacs issued by the petitioner in her favour had dishonoured by the Bank upon presentation on the ground of “insufficient funds”. The demand made by the complainant through legal notice dated 29.08.2011 failed to evoke any response and as no payment was made, therefore, a valid cause accrued in favour of the complainant to institute the complaint under Section 138 Negotiable Instruments Act, 1881.

After appearance of the accused, the trial Court conveyed the substance of accusation to him. The complainant had examined herself as CW-1 and further tendered documents Exhibits C-1 to C-4 i.e. original cheque(s), Bank Memo, legal notice and postal receipts in support of her evidence and closed her evidence. After recording the statement of accused under Section 313 Cr.P.C, an opportunity was afforded to adduce the defence evidence. In defence Amrik Sinigh and Harjit Singh were examined as DW-1 and DW-2 respectively. It was the defence set up by the accused that the cheques in fact were issued in favour of Harjinder Singh with whom he was doing the business of sale of dupattas and ladies suits. According to the defence, the cheques in question were misused by the complainant. The trial Court after examining the evidence on record and other material proceeded to convict the accused vide its judgment dated 27.04.2015 and imposed the sentence as noticed above.

Aggrieved against the judgments of the even date passed by the trial Court, the convict preferred two separate appeals. The appellant failed

to appear before the Appellate Court and therefore, the steps were taken to secure his presence, however, the same had failed, thereby compelling the Appellate Court to issue the proclamation, which was effected on 23.03.2015. Since the appellant did not appear before the Appellate Court, therefore, the appeal was decided on merits in his absence. The Appellate Court vide its judgment dated 27.04.2015 upheld the judgment of conviction and order of sentence passed by the trial Court.

After the decision of the appeal(s), the parties entered into a compromise on 02.12.2017 and as per the settlement, complainant (party No.2) agreed to receive a sum of Rs.2 lacs through different draft bearing Nos.449173 and 449174 for a sum of Rs.1 lac each drawn at Punjab National Bank, Branch Jandiala Bagh, Amritsar. In the compromise deed, it was clearly mentioned that the claim of the complainant would stand satisfied in relation to the subject cheques and no claim shall survive. It was further agreed by her that she would make the necessary statement with regard to the compromise before this Court in the above petitions filed by Balpreet Singh (convict). The compromise was signed by both the parties.

The revision petition was taken up for hearing on 09.03.2018 and considering the compromise, delay in filing the revision was also condoned. The counsel for the complainant had appeared before this Court who admitted the factum of compromise. As the compromise was not disputed, therefore, this Court directed the convict to deposit the respective 15% of the cheque(s) amount as compounding fee before the High Court Legal Services Authority, in view of the decision of the Hon'ble Supreme

Court in “*Damodar S.Prabhu Vs. Sayed Babalal H.*”, 2010 (5) SCC 663.

The compliance of the said order was made by the convict and the same was recorded by this Court in its order dated 24.04.2018, which reads as under:-

“Ld. Counsel for the petitioner tenders Photostat copies of the receipt Nos.003 and 004 showing deposit of Rs.75,000/- and 30,000/- respectively on 22nd March, 2018.

To come up on 18th May 2018 for orders and presence of the complainant/respondent.

A copy of this order be kept on the file of other connected case.”

Thereafter, on 18.05.2018, the parties were directed to appear before the trial Court/Illaq Magistrate on 01.06.2018 for getting their statements recorded with regard to the compromise. Pursuant to the order dated 18.05.2018, a report dated 02.06.2018 was sent by Judicial Magistrate First Class, Amritsar wherein it was mentioned that the petitioner Balpreet Singh son of Nirmal Singh had come present before the Court for recording his statement, however, respondent Harjeet Kaur daughter of Bhagwan Singh did not appear. Thereafter, the case was taken up on 31.07.2018 by this Court, however, no one appeared on behalf of the complainant and notice was issued again for her service and pursuant to that, Mr. Sandeep Sharma, Ld. counsel for the complainant appeared on 28.09.2018 and filed his power of attorney. Thereafter, again the matter was adjourned to 31.01.2019 on his request.

Today again learned counsel for the respondent has made a

prayer for adjournment, however, this Court does not find any reason to adjourn the case without any valid reason. To a pointed query that whether the amount as mentioned in the compromise has been received by the complainant, learned counsel for the respondent (complainant) fairly states that the said amount has been received by the complainant. However, it is submitted by Mr.Sharma, Ld. counsel for respondent that the convict had assured to give her some more amount and since the convict has failed to make the payment of the said amount, therefore, the complainant (respondent) did not appear.

At this stage, learned counsel for the petitioner submits that there is no such agreement between the parties to make the payment beyond the amount agreed in the compromise deed dated 02.12.2017 (Annexure P-1). He submits that the complainant was satisfied at that stage and agreed for quashing of the complaint and therefore, it is apparent that she has turned dishonest and is demanding more amount from the petitioner.

After hearing learned counsel for the parties, this Court find that the compromise is not in dispute and the agreed amount has already been received by the complainant. It is not a case where the complainant was induced to enter into a compromise either on the basis of a misrepresentation or fraud thereby giving her any valid reason to retract from it. It may be added here that the petitioner has also deposited a total sum of Rs.1,05,000/- as compounding fee in respect of both the cases in compliance of the order dated 09.03.2018. Apart from it, at no stage, any application or reply to the application No.CRM-8685-2018 for compounding the offence was filed by

the complainant to deny the fact of compromise and receipt of amount by her. It is clear from the facts and circumstances of the case that the complainant has retracted from the compromise without any valid reason. It will be useful to rely upon the judgment of the Hon'ble Supreme Court delivered in “Mohd.Shamim Vs. Smt.Nahid Begum”, 2005 (1) R.C.R. (Criminal) 697, wherein criminal proceedings were quashed despite retraction by the complainant from the compromise.

Considering the facts and circumstances of this case, particularly the conduct of the respondent, this Court does not find any reason to decline the prayer made by the petitioner for compounding the offence. Resultantly, the application No.CRM-8685-2018 is allowed. As a consequence, the impugned judgments dated 27.04.2015 passed by the Appellate Court upholding the judgment of conviction and order of sentence dated 10.09.2014 passed by the trial Court, are set aside. Further, it is a fit case for imposing cost upon the respondent for being unfair to the Court. Resultantly, it is ordered that she shall deposit Rs.15,000/- as costs towards both the cases with the High Court Legal Services Authority within a period of four months from the date of receipt of the certified copy of this order.

The revision petitions are disposed off.

(MANOJ BAJAJ)
JUDGE

24.01.2020

vanita

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No