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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-117-2019 (O&M)
Date of Decision : 06.07.2021

Parkash

....Petitioner

Versus

Bhim Sain and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ashok Kumar Khunger, Advocate
for the applicant-petitioner.

Mr. Manu Loona, Advocate
for the respondent No.1.

Mr. Joginder Pal Ratra, DAG, Punjab
for respondent No. 2-State.

ARVIND SINGH SANGWAN, J. (Oral)

CRM-9768-2020

Allowed as prayed for.

Amended memo of parties is taken on record.

CRM-18639-2021

By way of filing the present application, learned counsel for the applicant-petitioner has prayed for grant of permission to the petitioner and respondent No.1 to compound the offence under Section 147 of the Negotiable Instruments Act.

For the reasons stated therein, the application is disposed of. Let the main case be taken up.

CRR-117-2019 (O&M)

Prayer in the main revision petition is for setting aside the judgment of conviction dated 06.12.2016 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') and was sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs. 3000/- with default clause as well as the judgment dated 01.10.2018, vide which, the appeal filed by the petitioner was dismissed by the lower appellate Court.

Brief facts of the case are that in a complaint filed by respondent No.1-Bhim Sain under Section 138 of the N. I. Act for dishonouring of a cheque for a sum of Rs.2,70,000/-, the petitioner was convicted and sentenced as noticed above.

The petitioner preferred an appeal before the Court of Sessions and during the pendency of the said appeal, the petitioner has paid an amount of Rs.1,10,000/- as part payment of a settlement arrived at between the parties and subsequently, another amount of Rs.80,000/- was paid.

Learned counsel for the petitioner submits that since the petitioner could not make the balance payment, his appeal was dismissed.

Learned counsel for the petitioner further submits that as on today, the petitioner has paid the entire cheque amount and in that context, the compromise has been effected between the parties on 02.03.2020, which is duly attested by the notary public.

The compromise is supported by an affidavit sworn by respondent No.1-Bhim Sain that he has received the amount of Rs.90,000/- and he is satisfied with the compromise and has no objection if the present revision petition is disposed of.

Learned counsel for the respondent No. 1-complainant does not dispute the factual position as well as the factum of compromise and the affidavit sworn in by respondent No.1-Bhim Sain.

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

After hearing learned counsel for the parties and considering the fact that the petitioner has faced a protracted trial since 2016 and had shown his *bona fide* to pay the amount even before the Court of Session, when the part payment was made, however, the balance amount could not be paid due to his poor financial condition and also considering the fact that the petitioner is not involved in any other case and has already paid the entire cheque amount of Rs.2,70,000/- to the complainant, who has duly acknowledged the same by way of compromise as well as the affidavit.

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, the present petition is allowed and the judgment of conviction dated 06.12.2016 and order of sentence of the even date, passed by the trial Court as well as the judgment dated 01.10.2018 passed by the first appellate Court are set aside.

06.07.2021

Chetan Thakur

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No