

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

115+225

**CRM-M-5189-2021 (O&M)
Decided on : 06.12.2021**

Rakesh Kumar @ Rakesh Rikhi

. . . Petitioner

Versus

State of Punjab and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. S. K. Choudhary, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

Mr. Ferry Sofat, Advocate
for respondent No. 2-complainant.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

CRM-41493-2021

For the reasons mentioned in the application, same is allowed and the affidavit of respondent No. 2 Sanjeev Kumar Sidhu, is placed on record.

Main case

This is a petition under Section 482 Cr.P.C. for quashing of complaint No. 12658 dated 21.10.2017 (Annexure P-4) under Section 138 of the Negotiable Instruments Act, 1881 along with summoning order dated 19.12.2017 (Annexure P-5) and order dated 29.04.2019 (Annexure P-6) vide which the petitioner has been declared as proclaimed offender and order dated 26.02.2020 (Annexure P-11) passed by Judicial Magistrate

1st Class, Ludhiana and all subsequent proceedings arising therefrom on the basis of the compromise dated 12.06.2019 (Annexure P-7).

Learned counsel for the petitioner has submitted that in the present case, on 21.10.2017, a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed by respondent No. 2 against M/s Rudraksh Group Overseas Solutions and the present petitioner by averring the present petitioner to be the proprietor of M/s Rudraksh Group Overseas Solutions. It is argued that in fact the real proprietor of the M/s Rudraksh Group Overseas Solutions was Kailash Kant and not the present petitioner. It is further submitted that in the said case, the matter was compromised as apparent from the affidavit dated 12.06.2019 of respondent No. 2 (Annexure P-7). The said affidavit is reproduced hereinbelow:-

“I, Sanjeev Kumar Sidhu, aged about 32 years, son of Daulat Ram, resident of House No. 667/6, Street No. 02, Basti Jodhewal Chowk, Ludhiana, do hereby solemnly affirm and declare on oath as under:-

- 1. That I had filed a Complaninat U/s 138 of N. I. Act against M/s Rudraksh Group Overseas Solutions titled as “Sanjeev Kumar Sidhu Vs. M/s Rudraksh Group @ Anr.” in the Hon'ble Court of Sh. Devnoor Singh, JMIC, Ludhiana in the month of October, 2017 bearing case No. COMA/12658/2017.*
- 2. That I have compromised the matter with the Firm (accused) and I have received lump sum amount as compensation from Kailash Kant the present Proprietor of M/s Rudraksh Group Overseas Solutions, SCO 15-16, Top Floor, Phase-I, Mohali, Punjab.*
- 3. That I do not want to proceed further in any way against*

the accused and I will withdraw the complaint filed against the accused and I have no objection if the P.O. Proceedings initiated against the accused are called back.

4. *That I will not file any criminal or civil suit against the accused regarding the cheques in question laying with the above mentioned complaint.*
5. *That I have compromised the matter with the accused firm with my own free will and without any pressure and I am fully satisfied as I received my payment from the accused firm in the above noted complaint case.*

I, the above named deponent further verify that the contents of my above statement are true and correct to the best of my knowledge and belief and nothing was kept concealed therein.”

A perusal of the said affidavit would show that the respondent had received the amount from Kailash Kant, the proprietor of M/s Rudraksh Group Overseas Solutions and it has been further stated that he does not wish to pursue the complaint.

Learned counsel for the petitioner has further submitted that however, in the meanwhile, the petitioner was declared as proclaimed offender vide order dated 29.04.2019 passed by JMIC, Ludhiana. It is also submitted that application filed for withdrawal was also withdrawn by the respondent. It has further been submitted that the petitioner is in fact a victim of acid attack and is unable to do even his day to day chores. It is further submitted that the matter has now been finally compromised and respondent No. 2 has also given his affidavit to the effect that he has no objection in case the present proceedings are quashed.

Learned counsel for respondent No. 2-complainant has placed

on record the affidavit of respondent No. 2 in which it has been specifically stated that the complaint under Section 138 of the Negotiable Instruments Act, 1881 was earlier compromised and the payment was received and even subsequently the matter has now been compromised in the present petition also and the demand draft of Rs.20,000/- has been received and thus, he has no objection in case the complaint, summoning order and P.O. order are quashed by this Court.

This Court has heard learned counsel for the parties and has perused the paperbook.

It is not in dispute that in the proceedings under Section 138 of the Negotiable Instruments Act, 1881, the compromise has been effected and the complainant has received the money from Kailash Kant, the proprietor of M/s Rudraksh Group Overseas Solutions. On 09.11.2021, this Court was pleased to pass the following order:-

“Learned counsel for the petitioner submits that in fact, in the present case, the matter has been compromised and the petitioner had given entire money to the complainant-respondent No.2 and has stated that in case, notice is issued in this case, only then he can appear before the Court. He has further submitted that he is ready to deposit Rs.20,000/- as litigation expenses for respondent No.2 to appear through counsel in the Court.

Notice of motion.

On advance notice, Mr. N.K. Banka, DAG, Punjab, appears and accepts notice on behalf of the State and seeks time to get instructions.

Adjourned to 30.11.2021.

In the meantime, learned counsel for the

petitioner is directed to get the draft for an amount of Rs.20,000/- in the name of the complainant on the next date of hearing.

It is made clear that in case the said draft is not produced on the next date of hearing in the name of the complainant, the present petition would be deemed to have been dismissed.”

In pursuance of the above order, respondent No. 2 has appeared and has filed fresh affidavit, the relevant portion of which is reproduced hereinbelow:-

“Affidavit of Sanjeev Kumar Sidhu, son of Shri Daulat Ram resident of House No: 667/6, Street No. 2, Basti Jodhwai Chowk, Ludhiana.

I, the above named deponent do hereby solemnly affirm and declare as under:-

- 1. That the deponent is the complainant in the complaint filed under Section 138 of the Negotiable Instruments Act against Rakesh Kumar @ Rakesh Rikhi and others and the matter was compromised with the co-accused earlier and the payment was received by the deponent and now the matter has been compromised with Rakesh Kumar @ Rakesh Rikhi as well.*
- 2. That the deponent has no objection if the complaint, summoning order and P.O. Order are quashed by the Hon'ble Punjab and Haryana High Court and the deponent has also received the demand draft of Rs.20,000/- from Rakesh Kumar as per the directions by the Hon'ble Punjab and Haryana High Court.*
- 3. That the deponent is giving the present affidavit without any pressure or coercion and is giving the same with his own consent.*

DATED: 02.12.2021

DEPONENT

PLACE: CHANDIGARH

VERIFICATION:

VERIFIED that the contents of Para 1 to 3 of the affidavit are true and correct as per my knowledge. No part of it is false and nothing has been kept concealed therein.

DATED: 02.12.2021

DEPONENT

PLACE: CHANDIGARH

A perusal of the above would show that the matter has been compromised and respondent No. 2 has received an amount of Rs.20,000/- from the petitioner as per the direction of this Court. Even the factum with respect to the matter earlier having been compromised with the co-accused has also been admitted and the factum of payment having been made to respondent No. 2 has also been admitted. It is also submitted that the said compromise is without undue pressure or coercion and is voluntary.

As per the Full Bench judgment of this Court in “***Kulwinder Singh and others Vs State of Punjab***”, 2007 (3) RCR (Criminal) 1052, it is held that High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offence and quash the prosecution where the High Court is of the opinion that the same is required to prevent the abuse of the process of law or otherwise to secure the ends of justice. This power of quashing is not confined to matrimonial disputes alone.

Hon'ble the Apex Court in the case of “***Gian Singh Vs. State of Punjab and another***”, 2012 (4) RCR (Criminal) 543, had also observed that in order to secure the ends of justice or to prevent the abuse of process of Court, inherent power can be used by this Court to quash criminal proceedings in which a compromise has been effected. The relevant

portion of para 57 of the said judgment is reproduced hereinbelow:-

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. XXX---XXX”

In view of what has been discussed hereinabove, the present petition is allowed and complaint No. 12658 dated 23.01.2014 (Annexure P-4) under Section 138 of the Negotiable Instruments Act, 1881 along with summoning order dated 19.12.2017 (Annexure P-5) and order dated 29.04.2019 (Annexure P-6) vide which the petitioner has been declared as proclaimed offender and order dated 26.02.2020 (Annexure P-11) passed by Judicial Magistrate 1st Class, Ludhiana and all subsequent proceedings arising therefrom on the basis of the compromise dated 12.06.2019 (Annexure P-7), are ordered to be quashed, qua the petitioner.

(VIKAS BAHL)
JUDGE

6th December, 2021

Mehak

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No