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

CRM-41321-2021 in/and
CRR-1341-2021 (O&M)
Date of decision : 07.12.2021

Amarjit Singh

...Petitioner

Versus

Amarjit Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vikram Bali, Advocate for the petitioner.

Mr. S.P.S. Chakkal, Advocate for respondent No.1.

Mr. Sukhbeer Singh, AAG, Punjab
for respondent No.2.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Though an application for compounding of offence has been filed by the learned counsel for the petitioner, yet he has prayed for preponing the date of hearing of main case from 10.01.2022 to today itself. Learned State Counsel for respondent No.2 and Mr. S.P.S. Chakkal, counsel appearing for respondent No.1 have raised no objection in this regard. In view of this, let the main case be preponed from 10.01.2022 to today itself and the same is taken up on Board for final

hearing alongwith the present application.

Challenge in the present Criminal Revision is to the judgment dated 24.07.2018 vide which the petitioner had been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and had been sentenced to undergo simple imprisonment for a period of one year and had further been directed to pay a fine of Rs.10,000/- for the commission of offence punishable under Section 138 of the Act of 1881 by the Judicial Magistrate, Ist Class, Rupnagar for dishonour of cheque dated 30.06.2016 for an amount of Rs.2,00,000/-. Challenge has also been made to the judgment dated 28.09.2021 passed by the Additional Sessions Judge, Rupnagar vide which the said conviction and sentence awarded to the petitioner had been upheld.

The brief facts of the case are that respondent No.1 had filed a complaint under Section 138 of the Act of 1881 on account of the fact that cheque amounting to Rs.2,00,000/- dated 30.06.2016 issued by the petitioner was dishonoured with the remarks "insufficient fund" and thereafter respondent No.1 had served the petitioner with notice under Section 138 of the Act of 1881 vide registered A.D. on 21.07.2016 and in spite of the said service of notice, the payment was not paid within the statutory period, hence, the complaint was filed.

The Judicial Magistrate Ist Class, Rupnagar, after considering the evidence and documents on record, convicted the petitioner under Section 138 of Act of 1881. An appeal filed before the Additional

Sessions Judge Rupnagar was dismissed after the entire matter was reconsidered and the evidence was re-appreciated.

Learned counsel for the petitioner has submitted that during the pendency of the present Criminal revision, the matter has been settled between the parties.

Learned counsel for the petitioner has referred to the compromise dated 17.11.2021 (Annexure A-1) which has been placed on record by way of filing criminal miscellaneous application bearing No.CRM-41321-2021. The same is reproduced hereinbelow:-

“ONE HUNDRED RUPEES stamp paper

INDIA NON JUDICIAL

AM 955739

Mutual decision

*Amarjit Kaur (Aadhar Card No.6210-4161-5211) Wife
Balwinder Singh, resident of Ward No.6, Bhurar Road, Sri
Chamkaur Sahib, Tehsil Sri Chamkaur Sahib, District
Rupnagar.*

First Party

And

*Amarjit Singh (Aadhar Card No.7184-7959-4116) son of
Surat Ram, resident of Village Mane Majra Road, Tehsil
Complex Shri Chamkaur Sahib, Tehsil Shri Chamkaur
Sahib, District Rupnagar, Hallabad District Jail,
Rupnagar, Bajria his friend Sandeep Sharma son Sadhu
Ram Sharma, resident house no.152, Ward No.4, Morinda,
Tehsil Morinda Rupnagar*

The other side

Today, on 17.11.2021, both the parties have the following

agreement.

1) That Amarjit Kaur filed a case against the other party Amarjit Singh under Section 138 of NI. Under the Act, Chakk had filed a case against the State Bank of Patiala Branch Chamkaur Sahib for a total amount of Rs.2,00,000/- in this Hon'ble Court of Sh. Aneesh Goyal, JMIC, Roopnagar passed of one year SI and a fine of Rs.10,000/- and a simple sentence of three months in case of non-payment.

2) That the other party in the court of Hon'ble Additional Sessions Judge, Rupnagar against the above order filed CRL Appeal no.175/26.07.2018 which is estimated to be "Amarjit Singh v. Amarjit Kaur. However, the appeal was dismissed on 28.09.2021 and the order of the lower Court was upheld.

3) That now they have reached an agreement, the parties want to reduce their differences in the hope of a better future.

4) That the first party has collected the check amount from the second party through Sandeep Sharma son of Sadhu Ram Sharma, resident of House No.152, Ward No.4, Morinda, Tehsil Morinda, District Rupnagar, and at present, there is no balance left now from side of Amarjeet Singh.

5) That the first party is required to appear before the Hon'ble Court in connection with the acquittal or bail or further legal action of the aforesaid Amarjit Singh, first party will be bound to make a statement. Amarjit Kaur has relinquished all her rights regarding the transaction of the above money which was made with the statement dated 26.06.2015 to Rupinder Kaur, regarding which the current

cheque was in dispute, and no transaction of that statement is pending and Amarjit Kaur will not file a case for that earnest money-biyaana.

6) That in Amarjit Singh appeal if it is required to acquit him or make compounding done, expenses will have to borne by Amarjit Singh.

7) That from today onwards there is nothing disputed left between the two parties and both the parties will not sue or make applications against each other.

The conditions set forth in the above mutual agreement

Both parties read, listened and accepted the signatures in the presence of witnesses without any fear or pressure. The agreement has been written so that the record remains. Date 17.11.2021

Signature

*Amarjit Kaur wife Balwinder Singh,
resident of Ward No.6, Bhurde Road,
Sri Chamkaur Sahib, Tehsil Sri Chamkaur
Rupnagar Sahib, Dist*

The other side

Sd/-

*Amarjit Singh son of Shurta Ram, resident of village Man
Majra Road, Tehsil Complex Shi Chamkaur Sahib, Tehsil
Shri Chamkaur Sahib, District Rupnagar, Hallabad
District Jail, Rupnagar, Bajria through his friend Sandeep
Sharma son of Sadhu Ram Sharma, resident of house
no.152, Ward No.4, Morinda, Tehsil Morinda, District
Rupnagar*

Witness first party xx

Sd/-

Witness the other party XX

Sd/- Stamp of NOTARY”

A perusal of the above compromise would show that it has specifically been stated by the complainant that there is no balance left towards the petitioner and the petitioner has repaid the amount due. It is further stated that the complainant would be bound to make a statement in favour of the petitioner for his acquittal/bail, so that the offence is compounded and the petitioner is acquitted of the charges levelled against him.

Learned counsel for respondent No.1 has stated that the said compromise is genuine and bona fide and has been entered into without any coercion or undue influence and has submitted that respondent No.1-complainant has no objection in case the present criminal revision is allowed and judgments of both the Courts below are set aside as the matter has been amicably settled.

Learned counsel for respondent No.2-State has submitted that since the matter pertains to Section 138 of the Act of 1881 and the offence is compoundable, thus, the State would have no objection in case the matter is disposed of and as the matter has been compromised, in fact, the State has no role to play in the same.

This Court has heard the learned counsel for the parties.

From the above facts, it is apparent that both the contesting parties are ad idem that the compromise has been duly effected between the parties without any pressure, threat or undue influence and the terms

of the said compromise have been duly complied with. The compromise would go a long way in maintaining peace and harmony between the parties and thus, a prayer has been made before this Court for compounding the offence in terms of Section 147 of the Negotiable Instruments Act, 1881 read with Section 320 (6) Cr.P.C. Since the offence relating to dishonour of cheque has a compensatory profile and is required to have precedence over punitive mechanism, therefore, the present revision petition deserves to be allowed.

It is also relevant to state that the petitioner has already undergone custody of 21 days out of the total sentence of 01 year of simple imprisonment.

A Coordinate Bench of this Court in a **judgment dated 09.03.2017** passed in **CRR No.390 of 2017** titled as **“Kuldeep Singh vs. Vijay Kumar and another”** has held as under:-

*“Reliance can be placed on **Kaushalya Devi Massand vs. Roopkishore Khore, 2011 (2) RCR (Criminal) 298 and Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097.** The revisional jurisdiction of the High Court in terms of Section 401 Cr.P.C. would result in bringing about ends of justice between the parties in the event of finding that the compromise is genuine, bonafide and free from any undue influence.*

The compromise in question would serve as a everlasting tool in favour of the parties for which indulgence can be given by this Court. The revisional exercise would also be in consonance with the spirit of Section 147 of Negotiable Instruments Act.

*The principle as laid down in **Damodar S. Prabhu vs. Sayed Babalal**, AIR 2010 (SC) 1097, would be squarely fortified if the compromise in question is allowed to be effected between the parties with leave of the Court.*

In view of aforesaid, impugned judgment dated 19.01.2017 passed by Additional Sessions Judge, Sri Muktsar Sahib vide which conviction and sentence of the petitioner was upheld stands quashed.

The revision petition is allowed subject to deposit of 15% of the cheque amount as per ratio laid down in Damodar S. Prabhu's case (supra) to State Legal Services Authority, failing which this order will be of no consequence. Necessary consequences to follow.”

Reliance in the abovesaid judgment was also placed upon the judgment of Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H**, reported as **(2010) 5 SCC 663** and thus, as per settled law, this Court has power to set aside the judgment of conviction against the petitioner on the basis of a valid compromise. The compromise in the present case is genuine and valid.

Keeping in view the abovesaid facts and circumstances, judgment of conviction dated 24.07.2018, order of quantum of sentence dated 24.07.2018 passed by the Judicial Magistrate Ist Class, Rupnagar and judgment of the Additional Sessions Judge, Rupnagar dated 28.09.2021 are set aside and the present criminal revision is allowed in terms of the compromise and the petitioner is acquitted of the charges framed against him.

The petitioner is directed to deposit an amount of Rs.30,000/-

being 15% of the cheque amount with the High Court Lawyers' Welfare Fund within a period of 6 weeks from today. However, it is made clear that in case the petitioner does not deposit the said amount of Rs.30,000/- within the aforesaid period then the present criminal revision would be deemed to have been dismissed.

Since, the main case has been decided, application bearing CRM-36741-2021 for suspension of sentence of applicant-petitioner is rendered infructuous and is disposed of as such.

All the pending miscellaneous applications, if any, also stand disposed of in view of the abovesaid order.

07.12.2021

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**