

**110+290 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-1641-2021 (O&M)
Date of Decision : 14.12.2021**

Prem Nath

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Munish Puri, Advocate, for the applicant/petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

(Through Video Conferencing)

ANOOP CHITKARA, J(ORAL)**CRM-42775-2021**

Application for placing on record photocopy of demand draft, postal receipt and affidavit of the petitioner (Annexures P-4 to P-6) is allowed in terms of the contents and prayer made therein. Document annexures P-4 to P-6 are taken on record.

CRR-1641-2021

The petitioner was prosecuted for offence under Section 138 read with Section 141 of Negotiable Instruments Act, 1881. Learned trial Court vide judgment dated 28.03.2018 passed in Criminal Case No.347 convicted the accused/petitioner under Section 138 of Negotiable Instruments Act, 1881 and sentenced him to undergo rigorous imprisonment for a period of one year with fine of Rs.1,000/- and in default of payment of fine to further undergo sentence for a period of thirty days.

Challenging the said conviction, the accused/petitioner filed an appeal before the Court of learned Sessions Judge, Pathankot vide Criminal Appeal No.39 of 25.04.2019, decided on 11.11.2021.

During the pendency of the appeal, the complainant Chander

Shekhar made a statement before the learned Sessions Court that he has

compromised the matter for a total amount of Rs.2,00,000/-. He further stated that an amount of Rs.50,000/- would be received by him on 11.09.2021 and the balance amount would be received by him within a period of two months thereof. A copy of the statement is found as part of the petition as Annexure P-2.

Vide order dated 28.10.2021, learned Sessions Judge, Pathankot adjourned the matter to 11.11.2021 because as per the terms of the compromise, appellant/convict was supposed to make the outstanding balance payment of Rs.1,50,000/- within a period of two months from 11.09.2021, which period would come to an end on 11.11.2021.

The appellant failed to make the balance payment within two months and learned Sessions Judge, Pathankot vide judgment dated 11.11.2021 passed in Criminal Appeal No.39 of 25.04.2019, dismissed the appeal and upheld the conviction.

Challenging the said dismissal, the petitioner has come up before this Court by filing present criminal revision petition.

Learned counsel for the petitioner has stated at bar that an amount of Rs.50,000/- had already been paid to the complainant as is reflected in the order Annexure P-3, dated 28.10.2021. Learned counsel further submitted that the balance amount of Rs.1,50,000/- would be paid to the complainant and sought time to place on record the compliance of the same.

The petitioner has filed application bearing CRM No. 42775 of 2021, which is supported by an affidavit of the petitioner. In the said affidavit, it has been stated that a demand draft bearing No.500932, dated 03.12.2021 amounting to Rs.1,50,000/- was drawn in favour of Chander Shekhar (complainant) has been sent to him through registered post on 09.12.2021. The petitioner has placed on record the photocopy of the demand draft as Annexure P-4 and the photocopy of postal receipt as Annexure P-5.

Learned Sessions Judge, Pathankot had adjourned the matter to 11.11.2021 because two months time had to expire on 10.11.2021. There is no illegality as far as this part is concerned. The only issue with which this Court is concerned is that instead of affording one more opportunity during the Covid-19 Pandemic days, learned Sessions Judge, Pathankot went on to decide the appeal and upheld the conviction. In paragraph 15 of the judgment, learned court noticed the factum of compromise but did not adjourn the matter even for a day to enable one more opportunity by way of compassion.

Now the petitioner/convict has shown his bona fide by sending the balance amount of Rs.1,50,000/- to the complainant by registered post. Given above, the matter has to be heard on compromise and not on merits as was done by the learned Sessions Judge, Pathankot. Consequently, the present revision petition is allowed. The impugned judgment passed by the learned Sessions Judge, Pathankot in Criminal Appeal No. 39 of 25.04.2019, decided on 11.11.2021 is set aside and the matter is remanded back to the court of learned Sessions Court, Pathankot to enable recording the statements of the parties on compromise and also to give time to the convict/petitioner to make good 15% compounding fee as per the directions of the Hon'ble Supreme Court in *Damodar S.Prabhu v. Sayed Babalal H*, 2010(5) SCC 633.

The parties are directed to appear before the learned Sessions Court in the month of January, 2022. The petitioner is directed to appear either in person or through his counsel before the concerned court. In case, the parties fail to record their statements in a reasonable time, it shall be open for the concerned Court to decide the matter on merits.

(ANOOP CHITKARA)
JUDGE

December 14, 2021
Manpreet

Whether speaking/reasoned	Yes
Whether reportable	No