

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

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CRR-978-2019 (O&M)

Date of Decision: 26.04.2022

ASHU SINGLA

... Petitioner

Versus

RAMA CHAWLA

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. A.S. Barnala, Advocate
for the petitioner.

None for the respondent-complainant.

VINOD S. BHARDWAJ, J. (ORAL)

The instant Revision Petition has been filed against the judgment of conviction as well as order of sentence dated 01.03.2017 passed by the Sub Divisional Judicial Magistrate, Kharar vide which the petitioner had been convicted and sentenced to undergo rigorous imprisonment for a period of two year and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one month under Section 138 of Negotiable Instruments Act, 1881 as well as impugned judgment dated 10.04.2019 passed by the Addl. Sessions Judge, S.A.S. Nagar, Mohali, whereby the appeal preferred by the petitioner was partly allowed and the quantum of sentence was reduced to one year as against the sentence of two years that was awarded by the Sub Divisional Judicial Magistrate, Kharar. However, in addition thereto, the amount of compensation was also doubled for a sum of Rs.1,80,000/-. The present Revision Petition has been filed being aggrieved of the said

judgments passed by the Courts below.

2. The matter came up for hearing before this Court on 22.04.2019, wherein the counsel for the petitioner had made a statement that he would not challenge the order of conviction and confines his prayer to the extent of quantum of sentence. It was also noticed that the petitioner claimed the compromise to have been effected between the parties and the amount of Rs.1,80,000/- stands remitted to the respondent-complainant. The factum of the said remission was also acknowledged by Shri Ajay Pal Singh Madaan, Advocate being the representative of respondent-complainant. The order dated 22.04.2019 is extracted as under:

“The petitioner has challenged the order dated 10.04.2019 of the Lower Appellate Court whereby he has been convicted under Section 138 of the Negotiable Instruments Act and has been sentenced to undergo rigorous imprisonment for one year.

Learned counsel for the petitioner contends that he does not challenge the conviction and would confine his prayer to the quantum of sentence only. He further contends that the petitioner has entered into a compromise with the respondent for an amount of Rs.1,80,000/-, out of which Rs.1,00,000/- had been paid earlier. A draft for outstanding amount of Rs.80,000/- has been handed over to the counsel for the respondent in Court today, towards full and final settlement of the dispute. He is in custody since his arrest on 10.04.2019.

Issue notice to the respondent. Mr. Ajay Pal Singh Madaan, Advocate accepts notice on behalf of the respondent and has filed his vakalatnama in Court today, which is taken on record. He contends that the matter has indeed been compromised.

List on 09.05.2019.

In the meantime, sentence of the petitioner shall remain

suspended, subject to his furnishing requisite bonds to the satisfaction of the CJM/Duty Magistrate concerned.”

3. Today on resumed hearing, learned counsel for the petitioner has contended that the since the entire amount in question already stands paid, the order of sentence be modified and that continued incarceration of the petitioner would not sub-serve any large interest of justice.

4. Even though there is no representation on behalf of the respondent-complainant, however, his statement made before this Court and noticed in the order dated 22.04.2019 have not been controverted or rebutted by the complainant through any other representation. Resultantly, this Court has no reason to believe that the dispute in question has not been amicably resolved between the parties.

5. The issue as regards compounding under the Negotiable Instruments Act at the stage of appeal as well as revision has come before this court as well as before the Hon'ble Supreme Court and they have upheld that the powers under Section 147 of the Negotiable Instruments Act can be invoked at any stage of the proceedings i.e. at the stage of trial, appeal or at the revisional jurisdiction and that the courts should be liberal in exercising such powers.

5. The Hon'ble Supreme Court in the matter of **K.M. Ibrahim Vs. K.P Mohammed & Another**, passed in Criminal Appeal No.2281 of 2009 decided on 02.12.2009 held as under:-

“5. Appearing for the appellant, Mr. Mukul Rohtagi, learned Senior Advocate, contended that since a specific power had been given to the parties to a proceeding under the Negotiable Instruments Act under Section 147

to compound the offence, there could be no reason as to why the same cannot be permitted even after conviction, which had been affirmed upto the High Court. It was urged that in order to facilitate settlement of disputes, the legislature thought it fit to insert Section 147 by Amending Act 55 of 2002. Such amendment came into effect from 6th February, 2003, and provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under the Act would be compoundable.

6. *Mr. Rohtagi urged that in view of the non-obstante clause, the provisions of Section 147 were given an overriding effect over the Code and in view of the clear mandate given to the parties to compound an offence under the Act, reference to Section 320 Cr.P.C. can be made for purposes of comparison only in order to understand the scope of Section 147 of the Negotiable Instruments Act.*

7. *Mr. Rohtagi submitted that the said position had been accepted by this Court in various decisions, such as in the case of O.P. Dholakia vs. State of Haryana & Anr. [(2000) 1 SCC 762], wherein it was held that since the petitioner had already entered into a compromise with the complainant and the complainant had appeared through counsel and stated that the entire money had been received by him and he had no objection if the conviction already recorded under Section 138 of the Negotiable Instruments Act is set aside, the Hon'ble Judges thought it appropriate to grant permission, in the peculiar facts and circumstances of the case, to compound the offence. While doing so, this Court also indicated that necessarily the conviction and sentence under Section 138 of the Act stood annulled.*

8. *The said view has been consistently followed in the case of (1) Anil Kumar Haritwal & Anr. vs. Alka Gupta & Anr. [(2004) 4 SCC 366]; (2) B.C. Seshadri vs. B.N. Suryanarayana Rao [2004 (11) SCC 510] decided by a three Judge Bench; (3) G. Sivarajan vs. Little Flower Kuries & Enterprises Ltd. & Anr. [(2004) 11 SCC 400]; (4) Kishore Kumar vs. J.K. Corporation Ltd. [(2004) 13 SCC 494]; (5) Sailesh Shyam Parsekar vs. Baban [(2005) 4 SCC 162]; (6) K. Gyansagar vs. Ganesh Gupta & Anr. [(2005) 7 SCC 54]; (7) K.J.B.L. Rama Reddy vs. Annapurna Seeds & Anr. [(2005) 10 SCC 632]; (8) Sayeed Ishaque Menon vs. Ansari Naseer Ahmed [(2005) 12 SCC 140]; (9) Vinay Devanna Nayak vs. Ryot Sewa Sahakari Bank Ltd. [(2008) 2 SCC 305], wherein some of the earlier decisions have been noticed; and (10) Sudheer Kumar vs. Manakkandi M.K. Kunhiraman & Anr. [2008 (1) KLJ 203], which was a decision of a Division Bench of the Kerala High Court, wherein also the issue has been gone into in great detail.*

9. *The golden thread in all these decisions is that once a person is allowed to compound a case as provided for under Section 147 of the Negotiable Instruments Act, the conviction under Section 138 of the said Act should also be set aside. In the case of Vinay Devanna Nayak (supra), the issue was raised and after taking note of the provisions of Section 320 Cr.P.C., this Court held that since the matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of conviction and sentence recorded by all the courts were set aside and the appellant was acquitted of the charge leveled against*

him.

10. The object of Section 320 Cr.P.C., which would not in the strict sense of the term apply to a proceeding under the Negotiable Instruments Act, 1881, gives the parties to the proceedings an opportunity to compound offences mentioned in the table contained in the said section, with or without the leave of the court, and also vests the court with jurisdiction to allow such compromise. By virtue of Sub-Section (8), the Legislature has taken one step further in vesting jurisdiction in the Court to also acquit the accused/convict of the offence on the same being allowed to be compounded.

11. Inasmuch as, it is with a similar object in mind that Section 147 has been inserted into the Negotiable Instruments Act, 1881, by amendment, an analogy may be drawn as to the intention of the Legislature as expressed in Section 320(8) Cr.P.C., although, the same has not been expressly mentioned in the amended section to a proceeding under Section 147 of the aforesaid Act.

12. Apart from the above, this Court is further empowered under Article 142 of the Constitution to pass appropriate orders in line with Sub-Section (8) of Section 320 Cr.P.C. in an application under Section 147 of the aforesaid Act, in order to do justice to the parties.

13. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. The various decisions cited by Mr. Rohtagi on this issue does not add to the above position.

14. It is true that the application under Section 147 of

the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.

6. Reference can also be made to the judgment in the matter of **Cochin Hotels Co.(P) Ltd & Ors Vs. Kairali Granites & Ors, (2005) 12 SCC 234**, and **K. Subramanian Vs. R. Rajathi represented by PAOP Kalippan, (2010) 15 SCC 352**, which held that the petitioner can resort to a compounding mechanism in terms of Section 147 of the Negotiable Instruments Act as offence related to dishonour of cheque has a compensatory profile and it should be given precedence to cumulative mechanism. The offence is almost a civil wrong which has been clothed in a criminal overtones, therefore, priority should be given to compensatory mechanism.

7. It was also held in the matter of **Damodar S. Prabhu Vs. Sayed Babalal H., AIR 2010 SC 1907** and **Kaushalya Devi Massand Vs. Roopkishore, (2011) 4 SCC 593**, to the effect that compromise in question would definitely go a long way to strengthen the mutual relationship between the parties and would serve as an ever lasting tool in their favour. Such an exercise would be in consonance with the spirit of Section 147 of the Negotiable Instruments Act.

8. In view of the compromise effected between the parties and

the catena of precedent judgments by the Hon'ble Supreme Court, the order of sentence passed by the Courts below is modified and the sentence awarded to the petitioner is reduced to the period already undergone by the petitioner.

9. Hence, while affirming the judgments of conviction passed by the Courts below and modifying the sentence of the petitioner in the above terms, the instant revision stands partly allowed.

10. Other misc. application(s), if any, also stand(s) disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

26.04.2022
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No