

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRM-7296-2020
in /and CRR-1067-2009 (O & M)
Date of decision: 19.05.2022**

Kallu Ram Petitioner

V/s

Kishan Kumar (since deceased through his LRs)
...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.Ankush Singla, Advocate, for the petitioner.

Ms. Gagandeep Kaur, Advocate, for the respondent.

JASJIT SINGH BEDI, J. (Oral)

The present revision petition has been filed against the order dated 23.04.2009 passed by the Additional Sessions Judge (Fast Track Court), Sirsa, vide which the appeal preferred by the petitioner against the judgment of conviction dated 19.10.2007 and order of sentence dated 20.10.2007 passed by the learned Judicial Magistrate 1st Class, Sirsa, has been dismissed.

2. The brief facts of the case are that as per the complainant, the accused borrowed a sum of Rs.1,50,000/- on 21.03.2003, through a cheque, which was encashed by the accused on the say day. The accused further borrowed a sum of Rs.50,000/- on 09.05.2003 by cash and assured that he would return the total amount of Rs.2,00,000/- within two months. The accused failed to pay the said amount but on repeated requests, issued a cheque bearing No.117232 for a sum of Rs.2,00,000/- on 12.12.2003 drawn

at Oriental Bank of Commerce, Ellenabad. The complainant deposited the said cheque on the same day, but the said cheque was dishonoured on account of 'insufficient funds'. The complainant again approached accused for making the payment but the same was not made, leading to initiation of proceedings under Section 138 of the Negotiable Instruments Act.

3. In the complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the complainant, the petitioner-accused was summoned to face the trial. The evidence was led and ultimately, he was held guilty and accordingly, convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. The compensation was also awarded to the complainant in the sum of Rs.3,00,000/- which is 1-1/2 amount of the cheque in question.

4. That aggrieved against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Additional Sessions Judge, Sirsa, which came to be dismissed on 23.04.2009.

5. Still aggrieved, the present revision petition has been preferred by the petitioner. During the pendency of the present criminal revision, an application (CRM-7296-2020) under Section 320(6) Cr.P.C. read with Section 147 of the Negotiable Instruments Act, 1881 was filed for permitting the compounding of the main case/revision petition i.e. criminal case under Section 138 of the Negotiable Instruments Act as the parties have amicably settled the dispute with intervention of respectable persons of the society. A joint affidavit of settlement (Annexure C-1) has been filed alongwith the

that a reading of Section 147 of the Negotiable Instruments Act read with Section 320 Cr.P.C. would show that where a settlement has been effected, the offence under Section 138 of the Negotiable Instruments Act can be compounded on account of the fact that a mutual compromise has been effected between the parties.

In terms of the order dated 03.03.2022 passed by this Court, the petitioner-accused was asked to deposit 15% of the cheque amount with the High Court Legal Services Committee, which has been deposited by him and a receipt No.16 dated 16.05.2022 for a sum of Rs.30,000/- has already been placed on record.

6. The learned counsel for the complainant-respondents has accepted the factum of compromise and has stated that she has no objection if the petitioner is acquitted of the charges framed against him.

7. I have heard the learned counsel for both the parties.

8. This Court in 'Vatsa Electronics Vs. Pala Ram & Anr. decided on 09.03.2022 in CRR-1585-2019' has also held that once a settlement is being effected, then in terms of Section 147 of the Negotiable Instruments Act and Section 320 Cr.P.C., the accused ought to be acquitted as the offence stands compounded.

9. The admitted position is that the matter stands settled and the settlement agreement between the parties dated 21.02.2020 (Annexure C-1) is already on record.

10. This Hon'ble Court in 'Ramesh Chander Vs. State of Haryana and another, 2007(1) RCR (Criminal) 245' held as under:-

“4. As per the provisions of Section 147 of the Act, the offence under Section 138 is compoundable. Section 147 reads as under:

“Offence to be compoundable-

Notwithstanding anything contained in the Criminal Procedure Code, 1973(2 of 1974), every offence punishable under this Act shall be compoundable”.

5. The compounding of the offence under Section 138 can be done during the trial of the case as well as by the High Court or Court of Session while acting in the exercise of its power of revision under Section 401 Criminal Procedure Code Reference may be made to Section 320(6) Criminal Procedure Code in this regard.

6. Further, under Section 320(8) Criminal Procedure Code the composition of an offence shall have the effect of acquittal of the accused with whom the offence has been compounded.”

11. In view of the above, since, the parties have voluntarily settled the disputes between themselves, it is a fit case for allowing them to compound the offence.

12. Accordingly, the revision petition is allowed and the order dated 23.04.2009 passed by the Additional Sessions Judge (Fast Track Court), Sirsa and the judgment of conviction dated 19.10.2007 and order of sentence dated 20.10.2007 passed by the learned Judicial Magistrate 1st Class, Sirsa , are hereby set aside. The petitioner is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

(JASJIT SINGH BEDI)
JUDGE

May 19, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No