

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

1 CRR-1078-2020 (O&M)
Date of decision : **16.11.2022**

Pawan Kumar and othersPetitioner(s)

VERSUS

Ramesh Kumar Bansal and another Respondent(s)

2 CRR-1080-2020 (O&M)

Pawan Kumar and othersPetitioner(s)

VERSUS

Ramesh Kumar Bansal and another Respondent(s)

3. CRR-1081-2020 (O&M)

Pawan Kumar and othersPetitioner(s)

VERSUS

Ramesh Kumar Bansal and another Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Ashish Gupta, Advocate for the petitioners

Ms.Disha Grover, Advocate for
Ms.Supriya Garg, Advocate for respondent No.1.

AMAN CHAUDHARY, J.

This order shall dispose of the above-mentioned three criminal revision petitions, the issue and facts involved therein being the same. For the sake of brevity, the facts are being taken from CRR-1078-2020.

The present revision petition has been filed against the judgment of conviction and order of sentence dated 6.8.2016 passed by Sub Divisional Judicial Magistrate, Amloh, vide which the petitioners were

convicted and sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs.25,000/- each under Section 138 of the Negotiable Instruments Act (for short the 'NI Act'). Against the said judgment/order, appeal filed by the petitioners was dismissed vide judgment dated 10.1.2020 by Additional Sessions Judge, Fatehgarh Sahib.

Concisely, the facts of the case are that petitioners and two others were the partners of M/s Krishna agriculture Steel Works. They were all incharge and responsible for the conduct of the business. To run the business, they were obtaining financial assistance from the complainant w.e.f. 1.4.2020. On the whole, a sum of Rs.2,16,84390/- remained due and payable by the accused jointly and severally. In lieu of the said financial assistance, the cheque issued by them, when presented by the complainant in Indian Overseas Bank, Branch Office Mandi Gobindgarh, was dishonoured vide memo dated 20.10.2022 with remarks "payment stopped by drawer." Thereafter, the complainant sent a legal notice of demand dated 8.11.2011, under Section 138 of NI Act but the same was not received by the accused as it was returned unclaimed. Hence, the complaint under Section 138 of NI Act was filed by the complainant against the accused.

Finding prima facie evidence, the petitioners were summoned to face the trial. They were served with a notice of accusation, to which they pleaded not guilty and claimed trial.

In support of his case, complainant Ramesh Kumar examined himself as CW1, Rajinder Kumar as CW2, Deepak Katoch as CW3 and by placing on record other documentary evidence in support of his case, closed the evidence.

On closing of the complainant's evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material appearing in the complaint was put to the accused. However, they denied the allegations and claimed false implication.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the complainant has successfully proved the case, bringing home guilt against the accused. Accordingly, the accused- petitioners were convicted and sentenced as mentioned in para no.1 above.

Aggrieved, convict-petitioners filed appeal, which was dismissed by the learned Additional Sessions Judge, Fatehgarh Sahib vide impugned judgment dated 10.1.2020.

Hence, the present revision petitions.

In pursuance of order dated 14.9.2022 passed by this Court, the matter was put up before the Mediation and Conciliation Centre to explore the possibility of settlement between the parties. A report dated 3.11.2022 of the Mediator has been received, wherein it has been stated that the dispute between the parties has been amicably settled and a written settlement/ agreement has been executed between them, which is appended to the said report.

Accordingly, learned counsel prays that the petitioners be permitted to compound the offence and for acquitting them by setting aside the conviction recorded by the trial Court as affirmed by the appellate Court.

Learned counsel for respondent No.1 has affirmed the factum

of compromise having arrived at between the parties and states that respondent No.1 has no objection, if the prayer made on behalf of the petitioners is accepted.

Heard.

Hon'ble The Supreme Court of India in the case of **K.Subramanian vs. R.Rajathi** (2010) 15 SCC 352 has held as under:-

“6. Having regard to the salutary provisions of Section 147 of Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.

7. xx xx xx

8. The CRL.M.P. No.12804 of 2009 in which the prayer is made by petitioner to permit him to produce affidavits sworn by him on December 1, 2008 as well as affidavit sworn by P. Kaliappan power of attorney holder of R. Rajathi on December 1, 2008, as additional documents is allowed. CRL. M.P. No.12803 of 2009 in which the petitioner has prayed to permit him to compound the offence and acquit him by setting aside the conviction recorded in Criminal case No. 726/2003 under Section 138 of the Negotiable Instruments Act by Learned Judicial Magistrate, Karur is allowed. The petitioner is permitted to compound the offence. The Order of conviction and sentence recorded by all the Courts are hereby set aside and petitioner is acquitted of the charge leveled against him. All the applications including Review Petition accordingly stand disposed of as also SLP (CrI.) No.6974 of 2008 @ CRL.M.P. No.14586 of 2008 in terms of this Order.”

The compounding of the offence at later stages of litigation in cases under Section 138 of NI Act has been held to be permissible by Hon'ble The Supreme Court of India in a case of **K.M. Ibrahim vs. K.P. Mohammed & Anr.**, 2009 (14) SCALE 262, wherein it was held as under:-

"11. 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.

12. 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 147of 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."

In view of the fact that the parties have amicably settled the dispute, which has been reduced in writing and the judgments referred to above, the petitioners are permitted to compound the offence. The judgment of conviction/order of sentence recorded by the trial Court and affirmed by the the appellate Court are hereby set aside and petitioners are acquitted of the charges framed against them.

The revision petitions stand disposed of accordingly.

Needless to say that the parties shall remain bound by the terms and conditions of the settlement/agreement.

Photocopy of the judgment be placed on the files of the connected cases.

16.11.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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