IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

229

CRR-5015-2015
Date of decision: 28.04.2022

BEANT SINGH ... **Petitioner**

Versus

STATE OF PUNJAB AND ANOTHER .... **Respondents**

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

Present: Mr. Ram Kumar Chauhan, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J.(Oral)

The present revision petition has been preferred against the judgment dated 09.08.2012 passed by the Judicial Magistrate First Class, SBS Nagar, in criminal complaint No. 207-2 of 08.12.2008 in case titled as "Paramjit Singh versus Beant Singh" where by the petitioner was convicted to rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- for commission of offence under Section 138 of the Negotiable Instruments Act, 1881. The aforesaid judgment of conviction and order of sentence was subject matter of challenge before the Sessions Court and the said appeal bearing No. NACT/0004874 of 2013 was dismissed by the Additional Sessions Judge, S.B.S. Nagar vide judgment dated 03.12.2015. Both the said Judgments were assailed in the instant revision petition.

2. It is pointed out by the learned counsel appearing on behalf of the petitioner that when the revision petition came up for preliminary

hearing before this Court on 24.12.2015, an undertaking of the petitioner to deposit 50% of the cheque amount within period of 15 days was recorded and the petitioner was ordered to be released on bail. The amount of dishonoured cheque being Rs.50,000/-, a sum of Rs. 25,000/- was deposited before the Illaqa Magistrate on 30.12.2015 against Book No.22, receipt No. 007056. Thereafter, the remainder amount of Rs.25,000/- was deposited by the petitioner with the trial Court vide demand draft bearing No. 456683 dated 13.02.2019 and the same has also been released in favour of the respondent-complainant through his duly authorized attorney.

3. It is pointed out that the during the pendency of the present revision petition, the remainder of the dishonoured cheque amount i.e. 25,000/- was also deposited by the petitioner in compliance of the order dated 21.01.2019 and such fact was duly noticed by the Chief Judicial Magistrate, S.B.S. Nagar in the order dated 14.02.2019 passed in CRM-42 of 2019 titled as "State versus Beant Singh". It is thus argued that the entire amount already stands paid to the respondent and that no amount remains payable.

4. Learned counsel further makes a prayer that he does not wish to raise a challenge to his conviction and would confine his prayer only to the sentence especially when the entire amount already stands paid to the complainant and has been received by him.

5. Certain facts are essential to be noticed for an appropriate adjudication of the present petition are as under:

5.1 The complaint in question was instituted by the respondent on allegation that he had advanced a sum of Rs.50,000/- as a friendly transaction in favour of the petitioner and that cheque bearing No. 322076 dated 02.06.2008 drawn on State Bank of India, Branch Chabbewal, District Hoshiarpur was issued by the petitioner in discharge of his liability. However upon presentation of the said cheque the same was returned unpaid with the remarks "insufficient fund" vide return memo dated 31.10.2018. The amount in question was not returned despite a legal notice sent under Section 138 of the Negotiable Instruments Act, 1881.

5.2 The petitioner was summoned by the trial Court to face trial. On appearance, notice of accusation was served and evidence was recorded. The respondent stepped into the witness box as CW-1 and proved the following documents :

Ex.C1	Cheque
Ex.C2	Memo of State Bank of India, Chhabewal Branch
Ex.C3	Carbon copy of notice
Ex.C4	Postal receipt

5.3 That Ram Parkash Mishra from State Bank of India, Chhabewal was appeared as CW-2, while Kamaljit Singh, Field Assistant, Citizen Urban Co-op, Bank Limited appeared as CW-3.

5.4 The entire incriminating evidence was presented to the petitioner-accused to which he pleaded not guilty and claimed trial. Evidence was also lead in defense. As many as 04 witnesses were examined by the petitioner. The same are detailed as under :

DW-1	Gulbahar Singh
DW-2	Surjeet Kumar
DW-3	Devi Dass
DW-4	Accused himself

5.5. The petitioner also tendered documents to Mark A to Z, Mark AB and Mark AD. Upon institution of the respective submission advanced by the parties, the Illaqa Magistrate, S.B.S. Nagar recorded a finding of conviction against the petitioner as the transaction was found to be duly proved and sentenced.

5.6 Aggrieved of the said judgment of conviction and order of sentence passed by the Illaqa Magistrate, the petitioner preferred an appeal before the Sessions Court, S.B.S.Nagar. Vide judgment dated 03.12.2015, the appeal preferred by the appellant was dismissed by the Additional Sessions Judge, S.B.S. Nagar. Aggrieved thereof, the present appeal has been filed.

6. Learned counsel for the petitioner, having chosen not to assail judgment of conviction and filing his payer only to the sentence and had contended that the petitioner is nearly 75 years of age and had already undergone a Cardiac arrest. He further submits that the petitioner is a poor person who has limited resources and it is for the said reason that he took some time to arrange for the small amount of Rs.50,000/- to be repaid. He further submits that the petitioner is not having good health and even otherwise the transaction in question pertains to the year 2008 and that the

petitioner has faced a criminal incarceration for a period of 14 years approximately. It is also prayed that there is no other criminal prosecution against the petitioner which shows that the petitioner has remained law abiding and has never violated the Rule of Law.

7. There is no representation on behalf of respondent No.2 despite service. It is also noticed that the amount deposited by the petitioner with this Court as well as before the Chief Judicial Magistrate, S.B.S. Nagar has already been withdrawn by the respondent No.2 through his attorney. It is thus evident that the said respondent has no subsisting interest in the present proceedings.

8. 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.*
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> *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.

9. 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.

10. 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 Khore, (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, 1881.

11. Taking into consideration the legal principles culled out from the precedent judgments and noticing that the proceedings under Section 138 of the Negotiable Instruments Act, 1881 are quasi civil proceedings intending to effect recovery of the amount as well as to the mitigating circumstances pointed out by the learned counsel appearing on behalf of the petitioner and noticed in Paragraph 6 of the judgment, I am of the considered view that the petitioner has been able to display reasonable counts for modification of the judgment of conviction and order of sentence passed by the Courts below.

12. The perusal of the case would show that the respondent-complainant has already left for abroad & has received the amount through his GPA without any objection. The changed circumstances are thus to be

kept in mind by the Court while examining the proportionality of the sentence so imposed. The Court strikes a fine balance so that the punishment does not deter people from coming forward to settle their dispute and must also not be seen as lenient to an extent where accused persons feel that they can claim acquittal after retaining the money, enjoying the same for some period of time and then get away by paying the principal amount only. The object in proceedings being to give primacy to the business transactions and sanctity to the Negotiable Instruments & to ensure recovery & repayment of money, the same are being sought to be balanced as the respondent has not shown any objection to balancing the proportionality of punishment.

13. Hence, while upholding the judgment of conviction, the order of sentence passed by Courts below, the order of sentence is however modified and the sentence awarded to the petitioner is reduced to the period of custody already undergone by the petitioner while the fine of Rs. 1,000/- imposed upon the petitioner is enhanced from Rs.1,000/- to Rs.2,000/- . In the event of default on the part of the petitioner to deposit the enhanced fine, he shall have to undergo rigorous imprisonment for a period of 30 days.

The revision petition is partly allowed in terms as aforesaid.

(VINOD S. BHARDWAJ)

APRIL 28, 2022 **JUDGE**

Vishal Sharma

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