IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Reserved on: 11.05.2022
Pronounced on: 24.05.2022

1. **CRR- 1465-2019 (O &M)**

PARMESHWAR KUMAR DIXIT **...Petitioner**

Versus

STATE OF PUNJAB AND ANOTHER **…Respondents**

2. **CRR-1467-2019 (O&M)**

PARMESHWAR KUMAR DIXIT **...Petitioner**

Versus

STATE OF PUNJAB AND ANOTHER **…Respondents**

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

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Argued by : Mr. P.S Hundal, Senior Advocate with
Mr. Vikramjit Singh, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

Mr. Aalok Jagga, Advocate and
Mr. Harkirat S. Jagdev, Advocate
for respondent No.2.

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VINOD S. BHARDWAJ. J.

1. This common order shall dispose of two Criminal Revisions bearing CRR-1465 of 2019 and CRR-1467 of 2019 both titled as "Parmeshwar Kumar Dixit versus State of Punjab and another" as both the

petitions are between the same parties arising out of dishonour of cheque albiet for different cheque numbers.

2. The Criminal Revision No. 1465 of 2019 *"Parmeshwar Kumar Dixit versus State of Punjab and another"* has been instituted against the judgment dated 29.05.2019 passed in Criminal Appeal No. 26 dated 11.03.2015 by the Additional Sessions Judge, Ludhiana as well as against the judgment dated 26.02.2015 passed in case No. 41856 of 2013 passed by the Judicial Magistrate First Class, Ludhiana whereby the petitioner was convicted for commission of offence under Section 138 of the Negotiable Instruments Act and has been ordered to be sentenced to undergo rigorous imprisonment for one and half years (18 months) along with fine of Rs. 4,000/- failing which the petitioner is to further undergo simple imprisonment for a period of one month.

3. The Criminal Revision No. 1467 of 2019 titled as *"Parmeshwar Kumar Dixit versus State of Punjab and another"* has been instituted against the judgment dated 29.05.2019 passed in Criminal Appeal No. 27 dated 11.03.2015 by the Additional Sessions Judge, Ludhiana as well as against the judgment dated 26.02.2015 passed in case No. 43710 of 2013 passed by the Judicial Magistrate First Class, Ludhiana whereby the petitioner was convicted for commission of offence under Section 138 of the Negotiable Instruments Act and has been ordered to be sentenced to undergo rigorous imprisonment for one and half years (18 months) along with fine of Rs. 4,000/- failing which the petitioner is to further undergo simple imprisonment for a period of one month.

4. Whilst Criminal Revision No. 1465 of 2019 arises in relation to the dishonour of cheque No. 074718 dated 22.03.2010 for an amount of Rs.5,00,000/- drawn on IDBI Bank Limited, Miller Ganj, Ludhiana, Criminal Revision No. 1467 of 2019 arises on account of dishonour of cheque No. 074721 dated 23.03.2010 for an amount of Rs.5,00,000/-.

5. Learned counsel appearing on behalf of the respective parties agreed that common questions arise for determination in the instant revisions petitions and the issue is involved between the parties, hence, the same can be heard and decided together.

6. The matter was initially heard on 11.05.2022 and the judgments in the case were reserved. After conclusion of the hearing, learned counsel for the petitioner sought for some time so that he may explore the possibility of amicable resolution between the parties and offered to pay the principle amount of the respective cheques in dispute.

7. The aforesaid offer was accepted by learned by the learned counsel for the respondent and a statement was made in Court that in the event the principle amounts in both the complaints is deposited/handed over to the respondent-complainant, they shall not press for the interest on the due amount and would have no objection to the matter being compounded.

8. Learned counsel for the petitioner thus sought for some time to arrange for the requisite finance so as to advance the payment to the respondent-complainant. A sum of Rs.10,00,000/- was handed over to the counsel for the respondent-complainant vide two demand drafts viz. D.D.

No. 373296 dated 17.05.2022 and D.D. No. 373299 dated 21.05.2022 drawn on Punjab National Bank, Jamalpur Road, Ludhiana.

9. Hence, the entire amount of Rs. 10,00,000/- which is subject matter of dispute in the instant two Criminal Revision petitions stands paid. Furthermore, the amount of fine so imposed by the trial Court has already been deposited. Learned counsel for the respondent-complainant has reiterated that in lieu of the amount having been paid, he has no objection to the matter being compounded between the parties.

10. Briefly, the dispute amongst the parties is summarized for the sake of narrative. The relevant facts had been extracted from CRR-1465 of 2019 :

> *The complaint in question was instituted by the complainant M/s Nahar Industrial Enterprises Limited against the petitioner being the sole proprietor of accused company M/s Desire Clothing. The respondent-complainant company being a public limited company and engaged in supply of yarn to respondent-accused on credit basis, had been receiving part payment in lieu of supply so made. After adjusting all the payments received from the petitioner-accused, an amount of Rs.31,54,434.95 was found due as on 20.03.2010. Various cheques were issued by the petitioner-accused in discharge of the said pre-existing liability. The two of the cheques are subject matter of the instant revision petitions. That the said cheques were presented for encashment in Bank, the same were dishonoured by the bank on the remarks "insufficient funds" vide Bank Memo dated 23.03.2010. A legal notice dated 16.04.2010 was accordingly served on the*

petitioner-accused and on failure on the part of the petitioner-accused to make the payment, the complaint under Section 138 of the Negotiable Instruments Act, 1881 was thus instituted.

> *"5. During the course of post summoning evidence complainant Ram Parkash stepped into the witness box as CW1 and tendered his affidavit Ex.CA in his examination in chief and he deposed as narrated in the complaint and also placed on record Copy of Incorporation Certificate Ex.C1, Memoranum of Articles of Association Ex.C2, Resolution Ex.C3, Original Cheques Ex.C4, Bank Memo Ex.C5, Notice Ex.C6, Postal Receipts Ex.C7 and Ex.C8, UPC receipt Ex.C9 and statement of account Ex.C10. Thereafter the complainant closed his after notice evidence.*
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> *6. Statements of the accused u/s 313 Cr.P.C was recorded wherein the accused has denied all the allegations levelled against him. Accused pleaded his innocence on the ground that the complainant has filed a false complaint against him. He further pleaded that he had given blank cheques bearing numbers 074718 to 074722 of Rs. 5,00,000/- each as security and it was settled between him and Shri Kamal Oswal Vice Chairman of complainant that the complainant will not present the same but the complainant has misused the cheques in question by filing the particulars in it. He further pleaded that there exists no liability upon him towards the complainant with regard to the cheques in question and he has never known by the name of Parshwar Kumar Dixit. He opted to lead defence evidence.*
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> *7. Accused in his defence had examined DW1 HC Sohan Lal who brought the summoned record with regard to FIR No.22 dated 24.6.2010 under section 420,406 IPC got lodged by Ravinder Singh Sodhi Manager Nahar Industries Private Limited Company Focal Point,Ludhiana and proved the copy of*

the same as Ex.DW1/A. DW2 Anil Sharma Ahlmad in the court of Mrs Vipindeep Kaur JMIC,Ludhiana who brought the files of complaint titled as Nahar Industries Vs Desire Clothing bearing no.568/2 of 16.3.2010, 124/2 of 10.3.2010, 125/2 of 10.3.2010, 126/2 of 10.3.2010 and complaints bearing no.1127/2 of 1.6.2010, 1128/2 of 1.6.2010 and proved the certified copies of the same as Ex.DW2/A to Ex.DW2/D. DW3 Mohinder Kumar Executive, IDBI Bank Milleer Ganj, Ludhiana who brought the record regarding pay order no.905789 dated 27.11.2009 for Rs. 3,00,000/-, pay order no.905631 dated 16.10.2009 for Rs. 4,68,121/- and pay order no.905658 dated 21.10.2009 for Rs. 10,00,000/- in favour of Nahar Industrial Limited and proved the certificate issued in this regard by their bank branch as Ex.DW3/A. He also proved the Certificate regarding the demand draft bearing no.905789 dated 27.11.2009 for Rs. 3,00,000/-, pay order no.905631 dated 16.10.2009 for Rs. 4,68,121/- and pay order no.905658 dated 21.10.2009 for Rs. 10,00,000/- as Ex.DW3/D.DW4 Mahesh Kaura Postal Assistant Focal Point, Post Office, Ludhiana . He brought the Certified copy of list of period of preservation record, detail of record weided out old record , detail of amount deposited in the department after weided out the record , original certificates dated 3.5.2011 and 10.5.2011 and proved the same Ex.DW4/A to Ex.DW4/F and accused himself examined as DW5 and tendered into evidence documents Ex.DW2 to Ex.DW8 and thereafter closed the defence evidence."

11. Upon consideration of the said evidence led by the respective parties, the Judicial Magistrate First Class convicted the petitioner-accused for commission of offence under Section 138 and 139 of the Negotiable Instruments Act, 1881 and sentenced the petitioner to undergo rigorous imprisonment for one and half year (18 months) along with fine of

Rs. 4,000/- failing which the petitioner is to further undergo simple imprisonment for a period of one month. Aggrieved thereof, an appeal was preferred before the Sessions Court, Ludhiana, however, vide the impugned judgment dated 29.05.2019, the Criminal Appeal so preferred was also dismissed by the Additional Sessions Judge, Ludhiana. Hence, the present revision petitions.

12. However, without going into the dispute on merits and considering that the amount of the cheque in dispute has already been deposited by the petitioner-accused with the respondent-complainant, the question which thus arises for consideration is as to whether the case in hand can be permitted to be compounded in terms of Section 147 of the Negotiable Instruments Act, 1881. The relevant provision of the Act is reproduced hereinbelow:-

> ***147 Offences to be compoundable***. *—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.*

13. The issue regarding 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.

14. 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.*
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> *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 SubSection (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.*

15. 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 criminal overtones, therefore, priority should be given to compensatory mechanism.

16. 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 everlasting tool in their favour. Such an exercise would be in consonance with the spirit of Section 147 of the Negotiable Instruments Act.

17. In view of the parties having settled the matter and the amount having been deposited by the petitioner with the respondent-complainant and in the light of consent of the parties, I deem it appropriate to invoke the power vested by virtue of Section 147 of the Negotiable Instruments Act and

allow the compounding of the offence under Section 138 of the Negotiable Instruments Act and set aside the impugned judgment dated 29.05.2019 passed by the Additional Sessions Judge & Judgment dated 26.02.2015 passed by Judicial Magistrate First Class, Ludhiana and acquit the petitioner of the charges against him, subject to the petitioner depositing a cost of Rs.10,000/- to the High Court Bar Clerks Association. The petitioner, if confined to jail, shall be released forthwith, in accordance with law.

Petitions are accordingly allowed in the terms as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

MAY 24, 2022
Vishal Sharma

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