

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRM-11196-2022 and CRM-3069-2019
in CRR-672-2018 (O& M)
Date of decision: 11.10.2022**

Harbans Singh

.... Petitioner

V/s

Ashok Kumar Chhabra

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kulwant Singh Dhanora, Advocate,
for the applicant-petitioner.

Mr. Naresh Kaushik, Advocate,
for respondent No.1.

JASJIT SINGH BEDI, J. (Oral)

CRM-11196-2022

This is an application under Section 482 Cr.P.C. for placing on record, exemption of certified copy and true typed copy of affidavit of the complainant-respondent/Ashok Kumar Chhabra.

The aforesaid application is allowed as prayed for. The affidavit of the complainant-respondent dated 19.03.2022 filed alongwith the application is taken on record.

CRM-3069-2019 in/and CRR-672-2018 (O & M)

This is an application under Section 147 of the Negotiable Instruments Act, 1881 for compounding of the offence and acquitting the petitioner/accused as the matter has been compromised between the petitioner and the complainant vide compromise deed dated 17.02.2018 (Annexure P-1).

The present revision petition has been filed against the judgment dated 08.11.2017 passed by the learned Additional Sessions Judge, Chandigarh, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 16.05.2016 passed by the learned Judicial Magistrate, 1st Class, Chandigarh, has been dismissed.

2. Briefly, the facts of the case are that the accused-petitioner had friendly relations with the complainant-Ashok Kumar Chhabra. The accused-Harbans Singh approached the complainant for manufacturing of gold ornaments i.e. one gold necklace set, two earrings, one ring and four bangles. For this purpose, the complainant and his wife handed over gold ornaments weighing about 112 grams to the accused. The accused assured the complainant to supply new gold ornaments within some time. The complainant requested to deliver the new gold ornaments but the accused lingered on the matter on one pretext or the other. Thereafter, the accused in lieu of the return of the gold ornaments, issued four cheques i.e. cheques bearing No.000013 dated 28.5.2014 amount to Rs.48,400/-, 000015 dated 29.05.2014 for Rs.48,400/-, 000017 dated 30.07.2014 for a sum of Rs.67,000/- drawn on Bank of India, SCO No.323 Sector 40-D, Chandigarh and fourth cheque bearing No.031714 dated 10.08.2014 amounting to Rs.1,50,000/- drawn on ICICI Bank, Sector 38-D, Chandigarh to the complainant. The complainant presented the three cheques i.e. Cheque No. No.000013 dated 28.5.2014 amount to Rs.48,400/-, 000015 dated 29.05.2014 for Rs.48,400/-, 000017 dated 30.07.2014 for a sum of Rs.67,000/- drawn on Bank of India, SCO No.323 Sector 40-D, Chandigarh. However, the same was dishonoured vide memos dated 22.07.2014 with the remarks "Insufficient Funds". The accused was duly served with a

counsel but the accused failed to make payment of the dishonoured cheques within the stipulated period of the receipt of the registered legal notice.

3. Thereafter, a complaint under Section 138 of the Negotiable Instruments Act, 1881, was filed, where 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 01 year and to pay compensation of Rs.1,63,800/- to the complainant and in default of payment of compensation amount to undergo simple imprisonment for one month.

4. Aggrieved against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the learned Additional Sessions Judge, Chandigarh, which came to be dismissed on 08.11.2017.

5. Still aggrieved, the present revision petition has been preferred by the petitioner. During the pendency of the present criminal revision petition, a compromise dated 17.02.2018 (Annexure P-1) has been effected stating that the matter has been settled amicably to the entire satisfaction of both the parties. An affidavit of the complainant-respondent dated 19.03.2022 has already been filed and now the parties shall not claim any further amount or costs in this matter. Both the parties have agreed to relinquish all their rights arising out of this matter. It would be relevant to mention here that a perusal 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.

6. The learned counsel for the complainant-respondent has accepted the factum of compromise and has stated that he 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 '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.”

9. 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.

10. 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.

11. Accordingly, the application (CRM-3069-2019) as well as the revision petition are allowed and the order dated 08.11.2017 passed by the learned Additional Sessions Judge, Chandigarh and the judgment of conviction and order of sentence dated 16.05.2016 passed by the learned Judicial Magistrate, 1st Class, Chandigarh, are hereby set aside. The petitioner is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

 Since the main petition has been disposed of, no order needs to be passed in the criminal miscellaneous application(s), if any.

(JASJIT SINGH BEDI)
JUDGE

October 11, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No