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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

118+227

CRR-1028-2021 (O&M)
Date of decision: 21.12.2022

SANJEEV BEHL
....Petitioner(s)

Versus

SALIL CHAUDHARY
...Respondent(s)
CRR-1029-2021 (O&M)

SANJEEV BEHL
....Petitioner(s)

Versus

SALIL CHAUDHARY
...Respondent(s)
CRR-1040-2021 (O&M)

SANJEEV BEHL
....Petitioner(s)

Versus

SALIL CHAUDHARY
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rakesh K. Moudgil, Advocate
for the petitioner.

Mr. Mohit, Advocate
for the respondent.

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-1028-2021.

Challenge in these petitions is to the judgment dated 03.09.2021 passed by the Additional Sessions Judge, Gurugram dismissing the appeal preferred against the judgment of conviction dated 15.05.2018 and order of sentence of sentence dated 19.05.2018, passed by the Judicial Magistrate First Class, Gurugram, whereby the petitioner was convicted and was sentenced to

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undergo simple imprisonment for 09 months under Section 138 of the N.I. Act and also to pay compensation to the tune of Rs.18,00,000/- to the complainant.

Concisely, the facts of the case as per the complaint are that accused-petitioner was doing business of import of cars and automobile parts under the name and style of M/s Raj Nath Automotives. In December 2014, complainant-respondent booked Mercedes Benz C Class and Skoda Rapid Car from accused-petitioner, who assured direct import of cars as per requirement and specification of complainant and promised to deliver it in January 2015. As per mutual understanding, complainant-respondent made payment through cheques. The son of complainant had also made payments to the accused-petitioner and accordingly the complainant-respondent paid Rs.29,50,000/- to accused-petitioner towards booking amount of aforesaid cars. It was agreed that for making remaining payment accused had to assist complainant in availing financial assistance from reputed financial institution on arrival of vehicles in India. In January, 2015 accused was supposed to deliver possession of vehicles but accused withdrew from commitments for the reasons best known to him. Accused offered to return amount to complainant and for that he gave four cheques to the tune of Rs. 28,50,000/- and made payment of Rs. 1,00,000/- through NEFT. Accused requested the complainant to deposit cheques in March 2015 as he was facing financial difficulty. However, on presentation of the cheque the same was dishonoured vide return memo dated 19.03.2015 with endorsement 'insufficient funds'. After receiving legal notice, accused approached complainant and requested him to settle the matter and further requested that settlement may be for payment of lesser amount. Complainant agreed and full and final settlement was arrived at for a sum of Rs.26,50,000/- which was inclusive of interest and terms of

settlement were reduced in a note dated 22.05.2015, written by accused. In order to make payment of settlement amount, accused issued 10 cheques bearing no. 860439 to 860448 all drawn on ICICI Bank, Cannaught Place, New Delhi. Nine cheques of Rs. 2,60,000/- and one cheque of Rs. 3,10,000/-. Last date for payment of entire amount was 15.07.2015. Cheque bearing no. 860439 of Rs. 2,60,000/- was encashed on 03.06.2015. However, cheques bearing no. 860444 dated 03.07.2015 of Rs. 3,10,000/-, 860446 dated 10.07.2015 of Rs. 2,60,000/-, 860447 dated 12.07.2015 of Rs. 2,60,000/- and 860448 dated 15.07.2015 of Rs. 2,60,000/- were dishonoured with remarks 'funds insufficient'. Thereafter, complainant contacted accused who assured that cheques shall be honoured either in the last week of August, 2015 or in first week of September, 2015. Complainant again presented cheques bearing no. 860444 dated 03.07.2015 of Rs. 3,10,000/-, 860446 dated 10.07.2015 of Rs. 2,60,000/-, 860447 dated 12.07.2015 of Rs. 2,60,000/- and 860448 dated 15.07.2015 of Rs. 2,60,000/- but same were returned unpaid vide bank memos dated 02.09.2015 with endorsement 'funds insufficient'. Thereafter, complainant tried to contact the accused but to no avail. Complainant through his counsel sent a legal notice to the accused which was dispatched on 13.10.2015, to which the accused neither replied nor made payment within statutory period.

The complainant examined himself in preliminary evidence and tendered documents Ex. CW1/1 to Ex. CW1/6 and thereafter closed the preliminary evidence.

After hearing learned counsel for the complainant-respondent, accused-petitioner was summoned to face trial for offence punishable under Section 138 of Act, vide order dated 19.10.2015.

Having secured the presence of the accused-petitioner, notice of accusation under Section 138 of Act was served to him vide order dated 25.05.2016 to which he did not plead guilty and claimed trial.

In order to prove the averments made in the complaint, respondent-complainant stepped into witness box as CW1 and tendered his duly sworn affidavit Ex.CW1/A and reiterated all the allegations as made in the complaint. Janak Singh CW3 has proved the summoned record i.e. Copy of FIR No. 205 dated 18.05.2014 under Section 406 IPC Ex. CW3/A. Shri Salauddin Branch Sales Officer, HDFC Bank, has proved account statement of Salil Chowdhary from 31.01.2011 to 31.10.2016 as Ex.CW4/B. Shri Shashi Kumar, CSO, HDFC Bank, has proved the bank account statement of Mohit Chaudhary as Ex.CW5/1 and certificate under Section 65 B as Ex.CW5/2. There is an entry at Point A of Ex.CW5/1 showing transfer of Rs. 1,00,000/- in the account of Raj Nath Automobiles. Sh. V.D Sharma has proved the record Ex. CW4/1 and authority letter Ex. CW4/2. CW Mayank Sharma has proved the record Ex. CW5/1 and Shri Anil, SWO, Corporation Bank, has proved the account statement of bank account no. 028600101094000 from 15.12.2014 to 15.12.2015 in the name of Mohit Chaudhary as Ex.CW6/1 and Ex.CW6/2. At point A there is an entry reflecting transfer of amount of Rs. 2,11,500/-. Thereafter, vide statement dated 05.06.2017, complainant has closed post summoning evidence.

Statement of accused-petitioner under Section 313 Cr.P.C was recorded on 26.09.2017, wherein he pleaded to be innocent and denied all allegations. He further stated that he has already paid and got adjusted an amount of Rs.22,86,000/-, which was received from the complainant and his son.

In defence evidence, the accused-petitioner examined himself as

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DW1 and deposed that he had paid entire amount to complainant after deduction of the amount which complainant was required to pay for automobile parts. Now he has no liability to pay any amount to complainant and complainant has filed the case to extort money from him. Vide separate statement dated 13.03.2018, he closed his evidence.

After hearing learned counsel for the parties and going through the record of the case, learned trial Court has convicted the accused under Section 138 of the Act and sentenced him in the manner, mentioned above.

Aggrieved with the decision of learned trial Court, the accused-petitioner filed an appeal against the judgment of the trial Court before the Additional Sessions Judge, Gurugram, which was dismissed vide judgment dated 03.09.2021.

Hence the present revision petitions.

Learned counsel for the petitioner submits that during the pendency of the present revision petition, the petitioner has now compromised the matter with the complainant-respondent before the Mediation Centre, District Court, Gurugram on 09.12.2021 (Annexure R-1) and nothing is due against the petitioner anymore. The factum of compromise stands recorded in the orders dated 21.04.2022 and 06.05.2022, vide which this Court had suspended the sentence of the petitioner on the statement made by the learned counsel for the complainant-respondent that the entire amount due as per the compromise entered into in Mediation Centre has since been received. The petitioner has now filed applications under Section 147 of the NI Act and Section 320 Cr.P.C. in the respective petitions seeking compounding of offence under Section 138 of the Negotiable Instruments Act, in view of the compromise effected between them. In

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para 8 thereof it was also been mentioned that the petitioner is 68 years old Senior Citizen and generally remains ill as he is having ortho, sugar, BP and heart problem.

Learned counsel for the complainant-respondent on instructions from his client affirms the aforesaid fact of compromise and receipt of the amount due and has no objection in case the offence is compounded.

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 (Crl.) 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 that, " 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. 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."

Considering the peculiar facts and circumstances of the case that the matter has since been amicably settled by way of a compromise, the respondent has affirmed the aforesaid fact as well as having received the amount in terms of the compromise arrived at in Mediation Centre, District Court, Gurugram, given his no objection to the petitions being disposed of, thus the applications for compounding the offence are allowed, in view of the judgments referred to above and the judgment of conviction dated 15.05.2018 and order of sentence of sentence dated 19.05.2018, passed by the Judicial Magistrate First Class, Gurugram and affirmed by the the Appellate Court are hereby set aside and petitioner is acquitted of the charges framed against him.

Disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

December 21, 2022

S.Sharma(syr)

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