

**(226) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR-1779-2019 (O&M)
Date of Decision: 23.03.2022**

Ashok Kumar

... Petitioner

Versus

State of Haryana & Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Garima Sharma, Advocate
for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

None for respondent No.2.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 22.07.2019 passed by the learned Sessions Judge, Ambala, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 07.09.2017 passed by the learned Judicial Magistrate, 1st Class, Ambala, has been dismissed.

2. The brief facts of the case are that the complainant and the accused had been working in a private concern namely H.M.M. Coach Factory Mandour and had been living in the same colony and were close friends. The accused in the month of August, 2014 contacted the complainant and told him that he wants to purchase a house at Jaggi Colony and for the

purpose he had applied for a housing loan and till then he immediately needed a sum of Rs.4,50,000/- for payment as advance money to be paid at the time of agreement to purchase the house and the accused promised that as soon as he got the house loan he would repay the borrowed amount. The complainant being a friend to the accused replied that he did not have the amount with him but he may pay the amount from his domestic over drafting account i.e. from his domestic limit account and interest is payable on the withdrawal amount. The accused agreed to pay the borrowed amount with interest and borrowed Rs.4,50,000/- and took the amount three times i.e. on dated 09.08.2014 a sum of Rs.1,50,000/-, on 13.06.2014 Rs.1,00,000/- and Rs.2,00,000/- on 16.08.2014. The complainant after three months demanded the borrowed amount but the accused expressed his inability to pay the amount because his housing loan had not been approved. After repeated demands by the complainant, the accused on 18.07.2015 submitted a cheque bearing No.276523 for Rs.5 lakhs (hereinafter to be referred as the “cheque in question”) i.e. Rs.5,00,000/- as principal amount alongwith interest Rs.50,000/-. The complainant presented the cheque in question for the encashment but the same was dishonoured. The complainant again contacted the accused and demanded his amount of Rs.5 lakh but the accused instead of making the payment replied adversely and denied to pay the amount. Thereafter, the complainant served upon the accused a notice dated 06.08.2014. But despite that the accused did not make the payment of the cheque in question within the stipulated period.

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 simple imprisonment for a period of 06 months and pay the cheque amount Rs.5 lakhs with interest @ 9 per cent.

4. That aggrieved against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the learned Sessions Judge, Ambala, which came to be dismissed on 22.07.2019.

5. Still aggrieved, the present revision petition has been preferred by the petitioner. During the pendency of the present criminal revision petition, the matter was referred to the Mediation and Conciliation Centre of this Court and as per the report dated 05.09.2019, a settlement has been arrived at between them on 05.09.2019. It would be relevant to mention here that a reading 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 '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.

9. The admitted position is that the matter stands settled and the settlement agreement between the parties dated 05.09.2019 is already on record. This Hon'ble 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."

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 revision petition is allowed and the order dated 22.07.2019 passed by the learned Sessions Judge, Ambala and the judgment of conviction and order of sentence dated 07.09.2017 passed by the learned

Judicial Magistrate, 1st Class, Ambala, are hereby set aside. The petitioner is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

(JASJIT SINGH BEDI)
JUDGE

23.03.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No