

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1994-2019 (O&M)

Date of Decision: 22.12.2022

M/s Maa Laxmi Ind. H/W Store

... Petitioner

V/s.

Bharat Enterprises and another

... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr. Deepender Singh, Advocate
for the revisionist- petitioner.

Mr. Ram Krishan Rana, Advocate
for respondent No. 1.

Mr. Bhupender Singh, DAG, Haryana
for respondent No. 2.

DEEPAK MANCHANDA, J.(Oral)

Petitioner has filed the instant revision petition assailing judgment dated 24.07.2019 passed by the Additional Sessions Judge, Faridabad whereby the appeal of the petitioner has been dismissed wherein the judgment of conviction dated 18.11.2016 and order of sentence dated 23.11.2016 passed by the Judicial Magistrate 1st Class, Faridabad were challenged. It is further submitted that vide judgment dated 23.11.2016 the petitioner was sentenced to undergo simple imprisonment for a period of six months under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and to pay compensation amount of Rs. 2,85,420/- to respondent No.1-complainant as also the judgment dated 24.07.2019 passed

by the Additional Sessions Judge, Faridabad whereby the appeal of the petitioner against the aforesaid judgment of conviction dated 18.11.2016 and order of sentence dated 23.11.2016 has been dismissed.

Briefly stated, respondent No.1-complainant through its proprietor -Dharmender Batra filed a complaint under Section 138 of the Act against the petitioner on the allegations that petitioner was having business dealings with the firm of complainant and in order to discharge his legal liability towards the complainant, petitioner issued account payee cheques bearing no.738630, 738634, 738635, 738635, 738636 & 738638 in favour of the complainant-firm which were dishonored. It is alleged that thereafter complainant-firm filed a complaint under Section 138 of the Act against the petitioner. It is further alleged that thereafter a compromise was entered between the complainant-firm and petitioner and as per the compromise the petitioner made the payment of Rs.50,000/- in cash and for part payment of the remaining outstanding amount, he issued two cheques i.e. Cheque bearing No.102167 dated 31.12.2014 for Rs.1,00,000/- and cheque No.102168 dated 31.3.2015 for Rs.90,280/- drawn on Indian Bank, Sector 37, SF 153, HUDA Market, Faridabad in favour of the complainant-firm. After presentation of cheques for encashment through banker, the same were turned back as unpaid vide different return memos dated 25.03.2015 and 31.03.2015 with remarks 'Account Closed'. Thereafter the complainant-firm sent a legal notice dated 25.04.2015 to the petitioner calling upon him to make the payment and no payment was made and then the complaint under Section 138 of the Act was instituted.

Feeling aggrieved, petitioner has filed the instant revision petition with a prayer that both the aforesaid judgments passed by the

Courts below be set aside and the petitioner may be acquitted of the charges levelled against him as the matter has been compromised between the parties vide compromise deed dated 02.08.2019 (Annexure P-1) and petitioner has paid entire compensation amount to respondent No.1-complainant.

Learned counsel for the petitioner relies upon the judgment in the case of **Tilak Kataria vs. State of Haryana and another, 2021 (3) RCR (Criminal) 404**, wherein, after considering various judgments of the Apex Court, it has been held that when the complainant does not have any objection, the proceedings should come to an end.

The Hon'ble Supreme Court in **Ramgopal and another vs. State of Madhya Pradesh, 2021(4) RCR (Criminal) 322**, has held that in non-compoundable cases of pre-dominantly private nature, even if compromise is reached after conviction, the proceedings can be quashed under Section 482 Cr.P.C. Further, the compromise in the present case is found to be fully covered in consonance of judgments and directions issued by the Court in **Kulwinder Singh and others vs. State of Punjab, 2007(3) RCR (Criminal) 1052** and **Gian Singh vs. State of Punjab and another, 2012(4) RCR (Crl.) 543**.

The Hon'ble Supreme Court in **A.T. Sivaperumal vs. Mohammed Hyath (D) by LR's, decided on 27.03.2017**, has held that once the settlement between the parties has been arrived at, the conviction can also be set aside and the litigation too. Similar view has been taken by a Coordinate Bench of this Court in the case of **Jagmohan Vs. Sandeep Aggarwal and another, 2021(4) RCR (Criminal) 86**.

During the course of preliminary hearing, on 16.05.2022,

parties were directed to appear before the trial Court/Area Magistrate for getting their statements recorded with regard to the compromise and the trial Court was directed to record the statements of all the concerned parties, with regard to the genuineness and validity or otherwise of the compromise and send the report to this Court.

In compliance thereof, report dated 20.07.2022 from Judicial Magistrate First Class, Faridabad, has been received with statements of parties, in which, it has been mentioned that the compromise is genuine, voluntary and valid and is not result of any threat or coercion etc. in any manner.

Learned counsel for the parties submit that as the matter stands compromised, CRM-24115-2019 filed under Section 147 of the Act read with Section 482 Cr.P.C. for compounding the offence under Section 138 of the Act filed by the petitioner may be allowed and permission may be granted to the parties to compound the offence under Section 138 of the Act in view of the law laid down by the **Hon'ble Supreme Court in Damodar S. Prabhu vs. Sayed Babalal H, 2010 (2) RCR (Criminal) 851**; the impugned judgments and order passed by the trial Court and the Appellate Court may be set aside and the petitioner be acquitted of the charge.

I have heard learned counsel for the parties and perused the record, where the matter has been amicably settled between the petitioner and the complainant

The impugned judgment of conviction dated 18.11.2016 and order of sentence dated 23.11.2016 passed by the Judicial Magistrate, 1st Class, Faridabad, and the judgment dated 24.07.2019 passed by the Additional Sessions Judge, Faridabad are set aside; the complaint under

Section 138 of the Act stands dismissed and the petitioner is acquitted of the charge in view of the fact that the petitioner has already deposited an amount of Rs. 28,542/- as cost with the Haryana State Legal Services Authority, Panchkula in view of the law laid down by the Hon'ble Supreme Court in *Damodar S. Prabhu* case (supra) and Acknowledgment Slip dated 20.12.2022, which has been supplied in the Court today.

The present petition is allowed in the aforementioned terms. Needless to say that the parties shall remain bound by the terms and conditions of the compromise.

Pending application(s), if any, stand disposed of in view of the above-said judgment.

Copy of this order be forwarded to the trial Court to ensure compliance.

Revision petition is disposed of in the aforesaid terms.

Since the main case is disposed of, pending application(s), if any, shall also stand disposed of.

(DEEPAK MANCHANDA)
JUDGE

22.12.2022

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Whether speaking/reasoned	Yes
Whether Reportable	Yes /No