

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-41100-2022

Date of Decision: 07.12.2022

Sachin Kumar

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Alok Mittal, Advocate for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

Mr. Shubham Thakur, Advocate for respondent No. 2.

ASHOK KUMAR VERMA, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing the order and judgment in appeal dated 16.02.2018 (Annexure P-2) passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri and the judgment of conviction and order of sentence dated 07.10.2015 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, on the basis of compromise dated 31.08.2022 (Annexure P-3) arrived at between the parties.

Brief facts of the case are that respondent No. 2 filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short-'the Act') before the Judicial Magistrate Ist Class, Jagadhri against the petitioner for dishonouring of cheque bearing No. 498561 dated 29.06.2013 for a sum of Rs.3,00,000/-. However, vide judgment of

conviction and order of sentence dated 07.10.2015 (Annexure P-1) passed by the trial Court, the present petitioner was convicted and sentenced to under go R.I. for one year and no fine was imposed. The matter was compromised between the parties for an amount of Rs.55,000/-. Thereafter, the petitioner preferred appeal against the order of conviction which was dismissed vide order dated 16.02.2018 (Annexure P-2) passed by the Additional Sessions Judge, Jagadhri.

Pursuant to the order dated 31.10.2022 passed by this Court, the parties appeared before the learned Judicial Magistrate Ist Class, Jagadhri, to get their statements recorded. Learned Judicial Magistrate Ist Class, Jagadhri, has submitted his report along with statements of the parties vide letter No. 680 dated 05.11.2022 duly forwarded by the learned District and Sessions Judge, Yamuna Nagar, vide letter No. 18882 dated 07.11.2022.

I have heard learned counsel for the parties and gone through the relevant record.

The issue involve herein is as to whether the present petition under Section 482 Cr.P.C can be entertained for compounding of offence after passing of the conviction order and dismissal of the appeal.

Hon'ble the Supreme Court in the case of ***Cochin Hotels Co. (P) Ltd. and others v. Kairali Granites and others, 2006(2) RCR (Criminal) 333***, in some what similar circumstances, allowed the compounding of offence and set aside the order of conviction and sentence. Similar order was also passed by the Apex Court in the case of ***K Subramanian v. R Rajathi Rep. By POAP Kaliappan, 2010 (1), RCR***

(Criminal) 184, in para 5 of the judgment, reads as under:-

“The Trial Court by Judgment dated September 21, 2004 convicted the petitioner under Section 138 and sentenced him to Simple Imprisonment for one year and fine of Rs.5000/- in default Simple Imprisonment for 3 months. Feeling aggrieved, the petitioner preferred Criminal Appeal No.107 of 2004 before Sessions Court which was dismissed on 24.12.2004. Thereupon, the petitioner filed Criminal Revision Application No.179 of 2005 before the Madurai Bench of Madras High Court which was dismissed on January 30, 2008. Therefore, the petitioner filed SLP (Crl) No.6974 of 2008 @ CRL.M.P. No.14586 of 2008 which was also dismissed on September 11, 2008. Thereafter, a compromise was entered into and petitioner claims that he has paid Rs.4,52,289/- to respondent. In support of this claim, the petitioner has produced affidavit sworn by him on December 1, 2008. The petitioner has also produced affidavit sworn by P.Kaliappan, Power of Attorney holder of R.Rajathi on December 1, 2008 mentioning that he has received a sum of Rs.4,52,289/- due under the dishonoured cheques in full discharge of the value of cheques and he is not willing to prosecute the petitioner. The Learned Counsel for the petitioner states at the bar that the petitioner was arrested on July 30, 2008 and has undergone the sentence imposed on him by the Trial Court and confirmed by Sessions Court, High Court as well as by this Court. The two affidavits sought to be produced by petitioner as additional documents would indicate that indeed a compromise has taken place between petitioner and the respondent and the respondent has accepted the compromise offered by petitioner pursuant to which he has received a sum of Rs.4,52,289/-. In the affidavit filed by the respondent a prayer is made to permit the petitioner to compound the

offence and close the proceedings.”

Section 147 of the Act is reproduced as under:

“147. Offence 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.”

Reliance has been placed on the judgment passed by this Court in the case of ***Ritesh Gupta v. State of Punjab and another 2009 (3) R.C.R (Criminal) 61***, whereby, this Court has relied upon the judgment of Apex Court in the case of ***O.P Dholakia v. State of Haryana and another, (2000) 1 SCC 762***, wherein, the Apex Court was pleased to allow the accused and the complainant to compound an offence under Section 138 of the Act despite conviction and sentence having been held by three Forums. In view of the compromise, the conviction and sentence under Section 138 of the Act was annulled.

Hon'ble the Supreme Court in the case of ***Mrs. Shakuntala Sawhney vs. Mrs. Kaushalya Sawhney and others, (1980) 1 SCC 63***, held that:-

“29. No embargo, be in the shape of Section 320 (9) of the Cr.P.C. or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.”

According to the report, learned Judicial Magistrate Ist Class, Jagadhri, is satisfied that the compromise effected between the parties is genuine. The amount of compensation of Rs.55,000/- has already been paid by the petitioner to respondent No. 2.

In view of the above and considering the report of learned Judicial Magistrate Ist Class, Jagadhri, the parties are allowed to

compound the offence under Section 138 of the Act. As such, the present petition is allowed and order and judgment in appeal dated 16.02.2018 (Annexure P-2) passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri and the judgment of conviction and order of sentence dated 07.10.2015 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, are set aside.

The petitioner who is in custody since, 10.10.2022, is ordered to be released forthwith, if not required in any other case.

December 07, 2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether Reportable **Yes/No**