

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

218

CRR-1930-2022 (O&M)
Date of decision: 09.11.2022

KUNWAR ONKAR SINGH

....Petitioner

Versus

SUKHJIT SINGH AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Samridhi Sareeen, Advocate
for the petitioner.

Respondent No.1 in person.

AMAN CHAUDHARY. J.

Challenge in this petition is to the judgment dated 08.04.2021 passed by the Additional Sessions Judge, Kapurthala dismissing the appeal preferred against the judgment of conviction and order of sentence dated 15.05.2018, passed by the Judicial Magistrate First Class, Phagwara, whereby the petitioner was convicted and was sentenced as under:-

Under Section	S.I. For period of	Fine	In default of payment of fine
138 NI Act	One year	Rs.2,000/-	One week

Concisely, the facts of the case are that as per the version of complainant that the present accused Kunwar Onkar Singh, had incurred a cash loan of Rs.4,50,000/- from the complainant. The accused in order to discharge of his existing liability towards complainant, had issued three cheques in favour of the complainant. The accused had issued that cheques with the assurance of their

encashment, but on presentation of the same, that were dishonoured vide separate memos of dated 10.10.2016 with remarks 'Funds Insufficient' in his account. Thereafter, a legal notice was issued to the accused on 14.10.2016 dispatched on 17.10.2016 for dishonour of that cheques vide postal receipts dated 17.10.2016, which was duly received by the accused on 19.10.2016. The accused failed to make the payment in question despite receipt of that notice to him. So, the complainant filed the present complaint against the accused on 03.11.2016.

The complainant in first round of that complaint i.e. in preliminary evidence, examined himself as CW-1 vide affidavit Ex.CW1/A, whereby he while deposing in the lines of version of complaint, has proved on record original cheques in question Ex.C1 to Ex.C3; bank memos Ex.C4 to Ex.C6 that the said cheques were dishonoured with the remarks 'Funds Insufficient' in the account of accused; copy of issuance of legal notice Ex.C7 dated 14.10.2016, which was dispatched on 17.10.2016 vide postal receipts Ex.C8 and Ex.C9 and the same was received by accused on 19.10.2016. Apart from that, the complainant also examined CW-1 Hamit Kumar, an official of the Allahabad Bank, Branch G.T. Road, Phagwara, whereby he proved on record account opening form Ex.CW2/A of the accused Kunwar Onkar Singh by producing record of his account bearing No.50284894579 in that bank. Thereafter, he closed the preliminary evidence on 11.04.2017.

After appreciating the preliminary evidence adduced on record, learned trial court summoned the accused vide its order dated 11.04.2017. The presence of accused was procured. On finding a prima facie case the notice of accusation was served upon the accused for the offence punishable under Section 138 of the Act, 1881 on 26.10.2017. The contents of notice of the accusation were

read over and explained to the accused in his own language. He pleaded not guilty and claimed trial. On closure of evidence of the complainant, the accused was examined as per provisions of section 313 of the Code of Criminal Procedure, whereby the entire incriminating evidence as came on record was put to him. The accused with the denial to that incriminating evidence against him has taken the plea that he is innocent and he has been falsely implicated in the present case.

The learned trial court after hearing the counsel for the parties, taking into consideration the allegations as made by the complainant against the accused and plea in defence by the accused held him guilty for the offence punishable under section 138 of the Act, 1881.

Aggrieved petitioner filed an appeal, which was dismissed by the learned Additional Sessions Judge, Kapurthala vide impugned judgment dated 08.04.2021.

Learned counsel for the petitioner submits that there is no minimum sentence prescribed under Section 138 of NI Act. That pursuant to the order dated 16.09.2022 passed by this Court, the Mediation proceedings were carried out and the same culminated on 01.11.2022, whereby the matter stood settled between the parties and the terms of the settlement were reduced into writing, which has been placed on record. As per the same the parties had agreed to settle the dispute on the first party making a lump-sum payment of Rs.4,10,000/- as full and final payment towards the settlement, out of which the first party had paid a sum of Rs.2,00,000/- on 01.11.2022, during the mediation proceedings itself and the balance amount of Rs. 1,60,000/- was agreed to be paid in two installments of Rs.80,000/- each, on or before 07.12.2022 and 07.01.2023 respectively. The remaining Rs.50,000/- had been deposited before the learned Chief Judicial

Magistrate, Kapurthala and the same had been ordered to be released to the second party.

Learned counsel points out that the petitioner who had been sentenced to 1 year simple imprisonment had also undergone 01 month as he was taken taken into custody on 17.08.2022 and his sentence was suspended on 16.09.2022, thus her prayer is that the offence may be compounded, in view of the settlement.

Mr. Sukhjit Singh-respondent No.1 appears in person (his Aadhaar card is taken on record as Mark-A). He affirms the factum of the settlement; affirms the receipt of the amount as mentioned in Point 4 of the settlement dated 01.11.2022 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 as under:-

"11. 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.

12. 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."

In view of the fact that the parties have amicably settled the dispute, which has been reduced in writing and the judgments referred to above, the petitioner is permitted to compound the offence. Considering the aforesaid facts and circumstances of the case that the matter has since been compromised and that the respondent has appeared in person affirming the aforesaid fact as well as having received the amount in terms thereof and giving his no objection to the petition being disposed of, the judgment of conviction/order of sentence recorded by the trial Court and affirmed by the the appellate Court are hereby set aside and petitioner is acquitted of the charges framed against them.

Needless to say that the parties shall remain bound by the terms and conditions of the settlement/agreement.

However, the respondents are at liberty to file an application in case

there is default of payment of money by the petitioner in terms and as mentioned in the settlement dated 01.11.2022.

Disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

November 09, 2022

S.Sharma(syr)

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