

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

**CRM-46529-2022 in
CRR-2126-2022
Date of Decision: 05.12.2022**

KULDIP SINGH

... Petitioner

Versus

GURNAM SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Manish Kumar Singla, Advocate
for the petitioner.

Mr. Naresh Jain, Advocate
for the respondent..

JASJIT SINGH BEDI, J.

CRM-46529-2022

This is an application filed under Section 482 Cr.P.C. for preponing the date of hearing in the case i.e. fixed for 23.01.2023.

For the reasons mentioned in the application, the same is allowed and the date of hearing is advanced from 23.01.2023 to today and the matter is taken up on board today itself.

CRR-2126-2022

The present revision petition has been filed against the judgment dated 08.09.2022 passed by the Additional Sessions Judge, Fatehgarh Sahib, vide which the appeal preferred by the petitioner against the judgment of

conviction and order of sentence dated 20.08.2018 passed by the learned Judicial Magistrate, 1st Class, Fatehgarh Sahib, has been dismissed.

2. The brief facts of the case are that the complainant purchased a vehicle bearing No.PB-11B-4100 for a consideration of Rs.6,75,000/- from the accused and out of this amount the complainant paid Rs.4,22,000/- to the accused/petitioner while the rest of the amount was to be paid at the time of registration of the vehicle. Later, the complainant came to know that the vehicle in question was got financed by the accused from Mahindra & Mahindra and the accused had committed a default in paying instalments of the same to the said company who were trying to recover the vehicle from the complainant and this fact had intentionally not been told by the accused/petitioner to the complainant at the time of selling his vehicle to him. When the complainant raised a protest against the same, the matter was settled between the accused and the complainant and it was agreed by the accused/petitioner that he would sell the said vehicle and having done so would return the amount of Rs.4,22,000/- to the complainant. On 22/02/2016 the above-said vehicle was sold by the accused to one Narinder Singh son of Mehar Singh through Hind Car Deals (Registered) in the presence of the complainant and the complainant had put his signatures as witness on the sale receipt of the vehicle along with the witness Gopal Kalra. After having done so, the amount of Rs.4,22,000/- of the complainant became due and recoverable from the accused/petitioner. In order to discharge a part of the said due amount the accused/petitioner issued a cheque No.090147 dated 15.11.2016 worth Rs.2,75,000/- drawn at Canara Bank, Branch Fatehgarh Sahib out of his account No.3452101000939. However, when on 03.02.2017

the complainant presented the abovesaid cheque through his bank i.e. State Bank of Patiala, Branch Sirhind City, District Fatehgarh Sahib, the same was returned dishonoured along with memo dated 03.02.2017 having remarks “funds insufficient”. Thereafter, the complainant sent a demand notice dated 17.02.2017 through his Advocate demanding Rs.2,75,000/-. The aforesaid notice was received by the accused/petitioner but neither any reply was sent nor the money was repaid.

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 01 year and and the accused/petitioner is also ordered to pay the amount of cheque as compensation to the complainant under Section 357 of the Cr.P.C. within a period of one month. In default of payment of compensation amount, the same shall be recoverable after the lapse of period of appeal.

4. Aggrieved against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Additional Sessions Judge, Fatehgarh Sahib, which came to be dismissed on 08.09.2022.

5. Still aggrieved, the present revision petition has been preferred by the petitioner. During the pendency of the present criminal revision petition, a compromise has been arrived at between them on 29.11.2022 (Annexure P-9). 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.

This 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.”

9. The admitted position is that the matter stands settled and the compromise/settlement between the parties dated 29.11.2022 (Annexure P-9) is already on record.

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 judgment dated 08.09.2022 passed by the Additional Sessions Judge, Fatehgarh Sahib and the judgment of conviction and order of sentence dated 20.08.2018 passed by the learned Judicial Magistrate, 1st Class, Fatehgarh Sahib, are hereby set aside. The petitioner is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

(JASJIT SINGH BEDI)
JUDGE

05.12.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No