

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

**CRR-1675-2021 (O&M)
Date of Decision: 07.07.2022**

Davinder Kumar

... Petitioner

Versus

State of Haryana & Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kunwar Rajan, Advocate
for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Nitin Arora, Advocate for respondent No.2-Complainant.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 23.11.2021 passed by the learned Additional Sessions Judge, Sri Muktsar Sahib, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 03.06.2019 passed by the learned Judicial Magistrate, 1st Class, Sri Muktsar Sahib, has been dismissed.

2. Briefly, the facts of the case are that the complainant had cordial relation with the accused and the accused took a friendly loan of Rs.2,00,000/- from the complainant in the month of September, 2017. In order to discharge the above said legal liability, the accused issued one post dated cheque No.027619 Sr. No.32027619 dated 10.01.2018 amounting to Rs.2,00,000/- drawn at Union Bank of India, Branch Sri Muktsar Sahib in

favour of the complainant. The accused signed the above said cheque in presence of the complainant. The accused assured the complainant that the said cheque will be honoured/encashed on its presentation to the bank. The complainant was maintaining his account at Punjab and Sind Bank, Branch Dashmesh Khalsa College, Sri Muktsar Sahib and the complainant presented the above said cheque to the accused's banker for encashment of the cheque amount and the complainant banker forwarded the above said cheque to the accused's bank through clearing house, but this cheque was returned unpaid to the banker of the complainant as dishonoured with the remarks "*Closed Dormant*" vide memo dated 10.01.2018 and the accused's banker returned the above said cheque along with memo to the complainant's banker and the complainant's banker returned the same to the complainant. The accused intentionally and malafidely got his account closed/dormant from his banker and malafidely issued the cheque in question in order to defeat the recovery of the complainant, which was ultimately dishonoured. The accused was duly served with registered legal notice dated 18.01.2018 by the complainant through his counsel, but the accused did not pay any amount. The accused was fully aware that there was no insufficient funds in his account and was not able to clear the above said cheque but the accused issued the cheque, in favour of the complainant intentionally and malafidely to defraud him.

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

rigorous imprisonment for a period of 01 year and fine of Rs.100/- and in default of payment of fine to further undergo simple imprisonment for 07 days.

4. That aggrieved against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the learned Additional Sessions Judge, Sri Muktsar Sahib, which came to be dismissed on 23.11.2021.

5. Still aggrieved, the present revision petition has been preferred by the petitioner. During the pendency of the present criminal revision petition, a compromise dated 09.02.2022 has been effected stating that the matter has been settled amicably to the entire satisfaction of both the parties and now the parties shall not claim any further amount or costs in this matter. Both the parties have agreed to relinquish all their rights arising out of this matter. 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 23.11.2021 passed by the learned Additional Sessions Judge, Sri Muktsar Sahib and the judgment of conviction and order of sentence dated 03.06.2019

passed by the learned Judicial Magistrate, 1st Class, Sri Muktsar Sahib, are hereby set aside. The petitioner is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

(JASJIT SINGH BEDI)
JUDGE

07.07.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No