

CRM-43835 of 2022 in/and
CRR-2280 of 2022 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-43835 of 2022 in/and
CRR-2280 of 2022 (O&M)
Reserved on: -16.11.2022
Date of pronouncement: -21.11.2022

Avi Kalra

.....Petitioner

vs.

Jaspreet Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -

Mr. Vivek Suri, Advocate,
for the petitioner.

Mr. Anhul Singh, Advocate,
for respondent No.1.

Mr. Anup Singh, AAG, Punjab.

NAMIT KUMAR, J.

Petitioner-Avi Kalra has filed the instant revision petition assailing judgment and order dated 27.08.2019 passed by learned Judicial Magistrate Ist Class, Patiala, whereby he has been convicted and sentenced under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') for a period of one year rigorous imprisonment and to pay compensation equivalent to the cheque amount along with simple interest @ 9% per annum as also the judgment dated 19.09.2022 passed by the Additional Sessions Judge, Patiala, whereby appeal of the petitioner

CRM-43835 of 2022 in/and
CRR-2280 of 2022 (O&M)

against the aforesaid judgment of conviction and order of sentence dated 27.08.2019 has been dismissed.

Brief facts of the case are that a complaint was lodged by respondent No.1 against the petitioner alleging that the petitioner being in dire need of money had approached respondent No.1-complainant through her husband as the husband of complainant was previously known to the petitioner because of one sale/purchase of property and had requested and obtained friendly loan to the tune of ₹3,00,000/- in the beginning of February, 2017 agreeing to return the same after lapse of one and half month and respondent No.1 advanced the above said amount of ₹3,00,000/- to the petitioner and in order to discharge his legal liability, petitioner issued three cheques in favour of respondent No.1 bearing No.000071 dated 14.03.2017 amounting to ₹1,00,000/-; cheque bearing No.000072 dated 14.03.2017 amounting to ₹1,00,000/- and cheque bearing No.000073 dated 14.03.2017 amounting to ₹1,00,000/-. After presentment of the said cheques, same were returned to respondent No.1 with the memo dated 15.03.2017 with the remarks "Insufficient Funds". Thereafter, respondent No.1-complainant had got issued a legal notice dated 28.03.2017 to the petitioner demanding the amount of the cheques which was duly served and was not received back. In spite of the notice, petitioner failed to make the payment. Hence, complaint under Section 138 of the Act was instituted.

After hearing both the parties and perusing the evidence on record, learned Judicial Magistrate Ist Class, Patiala, vide judgment of

CRM-43835 of 2022 in/and
CRR-2280 of 2022 (O&M)

conviction and order of sentence dated 27.08.2019 convicted and sentenced the petitioner under Section 138 of the Act to undergo rigorous imprisonment for a period of one year and to pay compensation equivalent to ₹3,00,000/- along with simple interest @ 9% p.a. from the date of issuance of cheque till the final realization from the date of issuance of cheque and in case of default of payment of compensation to undergo simple imprisonment for a period of three months.

The aforesaid judgment and order dated 27.08.2019 were challenged by the petitioner in appeal before the learned Additional Sessions Judge, Patiala, who, vide judgment dated 19.09.2022, dismissed the same finding it without any merit.

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.

Learned counsel for the petitioner submits that during the pendency of the instant revision petition before this Court, the matter got compromised between the parties for an amount of ₹3,40,000/- and the petitioner has paid the entire settled amount to respondent No.1 and receipt dated 14.10.2022 issued by husband of respondent No.1 is at Annexure P-1.

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

CRM-43835 of 2022 in/and
CRR-2280 of 2022 (O&M)

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 LRs***, 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.

Learned counsel for respondent No.1 does not dispute the factum of the compromise effected between the parties. He has produced the affidavit of Harjinder Singh, Special Power of Attorney holder of respondent No.1-Jaspreet Kaur, dated 14.11.2022, according to which the dispute has been settled and he has received the amount of ₹3,40,000/- from the petitioner.

Learned counsel for the petitioner and learned counsel for

CRM-43835 of 2022 in/and
CRR-2280 of 2022 (O&M)

respondent No.1, are ad-idem and submit that as the matter stands compromised, CRM-43835 of 2022 filed under Section 320 Cr.P.C. 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 learned trial Court and the learned 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.

In the present case, the cheque amount is ₹3,00,000/-. In view of the law laid down in ***Damodar S. Prabhu's*** case (supra), compounding of the present offence can be allowed provided the petitioner-accused pays 15% of the cheque amount by way of costs. On calculation, 15% of the cheque amount comes to be ₹45,000/-. As noticed above, the parties have settled the dispute by way of compromise. Thus, this Court grants permission to compound the offence punishable under Section 138 NI Act.

In view of the above, the impugned judgment of conviction and order of sentence dated 27.08.2019 passed by the learned Judicial Magistrate, 1st Class, Patiala, and the judgment dated 19.09.2022 passed by the learned Additional Sessions Judge, Patiala, are set aside; the

CRM-43835 of 2022 in/and
CRR-2280 of 2022 (O&M)

complaint under Section 138 of the Act stands dismissed and the petitioner stands acquitted of the charge, subject to his depositing the costs of ₹45,000/- with the Punjab State Legal Services Authority, in view of the law laid down by the Hon'ble Supreme Court in ***Damodar S. Prabhu's*** case (supra), within 15 days from the receipt of the certified copy of this order. 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 abovesaid judgment.

21.11.2022
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes