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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRR-2821-2022 (O&M)
Date of Decision: 21.12.2022**

KAMALJIT SINGH

....Petitioner

Versus

JATINDER SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGERPresent : Mr. Munish Kumar, Advocate
for the petitioner.

Mr. Vinay Kumar Gupta, AAG, Punjab.

Respondent No.1 in person.

HARSH BUNGER, J. (Oral)

The petitioner has been convicted for offence punishable under Section 138 of the Negotiable Instruments Act (in short "NI" Act) vide judgment of conviction and sentence dated 17.02.2020, passed by Judicial Magistrate Ist Class, Shaheed Bhagat Singh Nagar, whereby, the petitioner was sentenced as under:-

Offence u/s	Sentence
138 of the Negotiable Instruments Act, 1881	Rigorous imprisonment for 1 year besides, payment of fine of Rs.500/- and in default thereof, further undergo simple imprisonment for 10 days. Compensation equivalent to the cheque amount to be paid to the complainant.

Aggrieved against the aforesaid judgment of conviction and sentence dated 17.02.2020 passed by Judicial Magistrate Ist Class, Shaheed

Bhagat Singh Nagar, the petitioner had filed an appeal before the learned Sessions Judge, Shaheed Bhagat Singh Nagar, where the petitioner made payment of Rs.50,000/- through a cheque to the respondent No.1/complainant as part payment of cheque amount in dispute, which was duly accepted by respondent No.1/complainant (Jatinder Singh). The said fact was duly recorded in the order dated 27.10.2022 (Annexure P-2) passed by the Sessions Judge, Shaheed Bhagat Singh Nagar. However, subsequently vide judgment dated 06.12.2022, the appeal filed by the petitioner was dismissed, whereupon the petitioner was taken into custody to undergo the remaining sentence imposed upon him

The petitioner has filed the instant petition against the above-said judgment dated 17.02.2020 passed by Judicial Magistrate Ist Class, Shaheed Bhagat Singh Nagar and also the judgment dated 06.12.2022 passed by Additional Sessions Judge, Shaheed Bhagat Singh Nagar. In the petition, it is mentioned that cheque amount of Rs.50,000/- was paid by the petitioner to respondent No.1/complainant during the pendency of the appeal before Sessions Judge, Shaheed Bhagat Singh Nagar, however since he could not arrange the remaining amount accordingly his appeal was dismissed but now the petitioner had prepared the demand draft amounting to Rs.1,50,000/- in favour of respondent No.1/complainant as the matter had been amicably settled between the parties. Along with the present petition an application for compounding of offence has also been filed.

Vide order dated 16.12.2022, considering the submission made by the counsel representing the petitioner that the matter has been amicably settled between the parties, the following order was passed hereinbelow:-

“Present petition has been filed on behalf of the

petitioner against the judgment of conviction and order of sentence dated 17.02.2020, passed by the Judicial Magistrate Ist Class, Shaheed Bhagat Singh Nagar, and also judgment dated 06.12.2022, passed by the Additional Sessions Judge, Shaheed Bhagat Singh Nagar, whereby aforesaid judgment of conviction and order of sentence have been upheld.

It is noted that the proceedings under Section 138 of the Negotiable Instruments Act were initiated against the petitioner after dishonouring of cheque bearing No.297163 dated 07.02.2018 amounting to Rs.2,00,000/-, out of which, Rs.50,000/- was already paid to respondent No.1/complainant during pendency of the appeal, as is being reflected from order dated 27.10.2022 (Annexure P-2), passed by the Sessions Judge, Shaheed Bhagat Singh Nagar. Today, learned counsel for the petitioner has further brought a Demand Draft bearing No.479299, issued on 09.12.2022, for the remaining amount of Rs.1,50,000/- (Annexure P-3) (towards full and final payment) in the name of Jatinder Singh (respondent No.1) drawn on Indian Bank, Allahabad.

Learned counsel for the petitioner submits that the matter has been amicably settled between the parties.

Notice of motion.

At this stage, Mr. Krishan Sehajpal, Advocate has appeared and filed Memorandum of Appearance on behalf respondent No.1 in Court today, which is taken on record, subject to all just exceptions.

On the asking of the Court, Mr. Vinay K.Gupta, AAG, Punjab, who is present in the Court, accepts notice on behalf of respondent No.2/State.

Learned counsel for the petitioner is directed to supply complete copies of paper book to learned counsel for respondent No.1 and learned State counsel during the course of the day.

Mr. Jatinder Singh (respondent No.1) is also present in Court today, who is duly identified by his counsel. He has conceded the facts that the matter has been settled between him

and the petitioner and he has already received a sum of Rs.50,000/-. He further submits that today, he has also accepted the aforementioned Demand Draft (Annexure P-3) amounting to Rs.1,50,000/- towards full and final settlement of all his claims in respect of the cheque in dispute. Mr. Jatinder Singh has stated that with encashment of the said Demand Draft, no further dispute shall remain pending against the petitioner and he shall also not initiate any further proceedings in relation to the cheque in question, regarding which proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated against the petitioner.

List on 21.12.2022.

Parties are directed to remain present in Court on the next date of hearing.”

Vide order of even date i.e. 16.12.2020 passed in CRM-48975-2022, the sentence of imprisonment imposed upon the petitioner was also suspended during the pendency of the present Criminal Revision Petition.

On the other hand, learned counsel representing respondent No.1/complainant has come present along with the respondent No.1/complainant in person namely Sh. Jatinder Singh, who has filed his affidavit in the Court today, which is taken on record subject to all just exceptions. Jatinder Singh has admitted that he has received the entire payment of the cheque in dispute i.e. Rs.2,00,000/- towards full and final settlement and nothing remains due from the petitioner. He further submits that he has no objection if the application for compounding is allowed.

I have considered the submissions made on behalf of the respective parties and have perused the paperbook.

Section 147 of the NI Act provides that every offence punishable under the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), shall be compoundable.

The Hon'ble Supreme Court in the case of **K.M.Ibrahim V. K.P.Mohammed 2010 (1) SCC 798** has held as follows:

“9. The golden thread in all these decisions is that once a person is allowed to compound a case as provided for under section 147 of the Negotiable Instruments Act the conviction under Section 138 of the said Act should also be set aside. In the case of Vinay Devanna Nayak (supra), the issue was raised and after taking note of the provisions of Section 320 Cr.P.C. this Court held that since the matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of conviction and sentence recorded by all the Courts were set aside and the appellant was acquitted of the charge leveled against him.

10. XXX XXX XXX

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. The various decisions cited by Mr. Rohtagi on this issue does not add to the above position.

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.”

Hon'ble Supreme Court in the case of **Damodar S. Prabhu v. Sayed Babalal H, reported in (2010) 5 SCC 663** has accepted the submissions of the learned Attorney General of India that the "requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay sending the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice, and framed certain guidelines regarding the cost to be imposed for compounding at different stages, if the settlement is entered into after conviction. The Hon'ble Court has held as follows:

“21. With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being

burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:

The Guidelines

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the Court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

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23.xxx xxx xxx

24.xxx xxx xxx

25. *The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the Court is spent on the trial of these cases and the parties are not liable to pay any Court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent Court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance.”*

After considering the aforestated legal position and also the aforementioned facts and circumstances, especially the fact that the parties have amicably settled the dispute, I allow the compounding of offence under Section 138 of the Negotiable Instruments Act and set aside the conviction of the petitioner and also set aside the sentence imposed by the Court of Judicial Magistrate Ist Class, Shaheed Bhagat Singh Nagar, vide order dated 17.02.2020, as upheld vide order dated 06.12.2020 passed by the Sessions Judge, Shaheed Bhagat Singh Nagar. However, the same shall be subject to payment of cost of 15 per cent of the dishonoured cheque value which shall be deposited by the petitioner with the Haryana Legal Services Authority

within a period of 30 days from the passing of this order. Accordingly, the instant criminal revision petition is disposed of in the aforestated terms.

Pending application(s), if any, stands disposed of.

21.12.2022
Amandeep

(HARSH BUNGER)
JUDGE

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