

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

106+221

CRR-313-2023 (O&M)
Date of decision: 01.09.2023

Rajiv Bansal

...Petitioner

Versus

Devinder Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Samir Rathaur, Advocate for the petitioner.

Mr. Jagmohan Ghumman, Advocate for respondent No.1.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

AMAN CHAUDHARY, J.

CRM-36670-2023

For the reasons mentioned in the application, same is allowed.

Settlement deed dated 31.08.2023, Annexure A1, is taken on record, subject to all just exceptions.

Main Case

1. The challenge in the present criminal revision is to the order dated 24.01.2023 passed by learned Additional Sessions Judge, Gurugram, dismissing the appeal preferred against the judgment of conviction and order of sentence dated 26.07.2016 and 28.07.2016 passed by learned Judicial Magistrate First Class, Gurugram, vide which the petitioner was sentenced to undergo rigorous imprisonment for a period of one year under Section 138 of the Negotiable Instrument Act and to pay compensation to the tune of Rs.20,00,000/-

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2. The factual matrix of the case is that the accused-petitioner had taken a friendly loan of ₹18,00,000/- from the complainant, in discharge of which, he had issued three cheques dated 24.10.2013, 29.10.2013 and 19.10.2013 for Rs.10,00,000/-, Rs.5,00,000/- and ₹ ₹3,00,000/- respectively. However, on presentation thereof, the same were dishonoured and returned with the remarks “Fund Insufficient” vide memo dated 26.10.2013, 22.10.2013 and 30.10.2013. Despite issuance of legal notice, the petitioner failed to make the payment within the stipulated period. Consequently, the complaint was filed.

3. A notice of accusation was served upon him vide order dated 03.11.2014, to which he pleaded not guilty and claimed trial. To prove his case, the complainant himself appeared as CW-1 and tendered original cheque Ex.C1 to C3, copy of bank statement Ex.C-1/A and C-1/B, return memos Ex.C4 to C6, legal notice Ex.C7, postal receipt Ex.C8 and registered post envelop C9 in evidence.

4. The accused was examined under Section 313 Cr.P.C. where incriminating evidence was put to him, which he refuted and pleaded innocence. In defence, he examined Rakesh Bansal as DW1.

5. On scrutinising the evidence led by the parties, the trial Court convicted and sentenced the petitioner as noticed above. Being aggrieved, he filed an appeal, which was dismissed by the learned Additional Sessions Judge, Gurugram judgment dated 24.01.2023.

6. Aggrieved petitioner is before this Court.

7. Learned counsel for the petitioner would submit that during the pendency of the present petition, a settlement dated 31.08.2023, Annexure A1, has been arrived at between the parties, as per which settlement amount is Rs.10 lakh

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has been paid to the complainant-respondent. The petitioner is also ready to deposit the compounding fee per the law laid down in **Damodar S. Prabhu vs. Sayed Babalal H.** 2010(5) SCC 663 but prays the same be calculated keeping in view the above mentioned settled amount.

8. Learned counsel for respondent No.1, affirms the factum of compromise and on instructions, submits that there is no objection, if the prayer made by the petitioner is accepted.

9. Heard the learned counsel for either side and perused the file.

10. It would be gainful to refer to the judgment of Hon'ble The Supreme Court in **B.V. Seshiah vs. The State of Telangana and another** 2023 Live Law (SC) 75, wherein it was held thus:

“10. In the case of M/S Meters and Instruments Private Limited & Anr. Vs Kanchan Mehta, this court held that the nature of offence under section 138 of the N.I Act is primarily related to a civil wrong and has been specifically made a compoundable offence. The relevant paragraph of the judgment has been extracted herein: “This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions’ cheques were issued merely as a device to defraud the creditors. Dishonor of cheque causes incalculable loss, injury and inconvenience to the vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 payee and credibility of business transactions suffers a setback. At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 amendment specifically made it compoundable.”

11. This is a very clear case of the parties entering into an agreement and compounding the offence to save themselves from the process of litigation. When such a step has been taken by the parties, and the law very clearly allows them to do the same, the High Court then cannot override such compounding and impose its will.”

11. Hon'ble The Supreme Court in the case of **K. Subramanian vs. R.**

Rajathi (2010) 15 SCC 352 interpreted the provisions of NI Act with Section 320

Cr.P.C., and held thus:

“6. Having regard to the statutory 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.”

12. The compounding of the offence at later stages of litigation, in cases under Section 138 of NI Act, is permissible as per the ratio of law laid down by Hon'ble The Supreme Court in the case of **K.M. Ibrahim vs. K.P. Mohammed**, (2010) 1 SCC 798, relevant paras read thus,

"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."

13. Reiterating the aforesaid, Hon'ble The Supreme Court in **Damodar S.Prabhu vs. Sayed Babalal H.** (supra) held that in case of dishonour of cheque, accused convicted, there is no stage prescribed for compounding of offence under the Act and it was observed that "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."

14. Considering the facts and circumstances of the case, that the matter has since been compromised and applying the aforesaid *dicta*, the judgment of conviction/order of sentence passed by the trial Court and affirmed by the Appellate Court, are being hereby set aside. The petitioner is acquitted of the charges, subject to his depositing the compounding fee, as per the guidelines issued by Hon'ble The Supreme Court in **Damodar S. Prabhu** (supra).

15. In the peculiarity of facts and circumstances of the case and in light of the enunciation of law referred to above, the petitioner is permitted to compound the offence. The judgment of conviction/order of sentence recorded by the trial Court and affirmed by the appellate Court are hereby set aside and petitioner is acquitted of the charges framed against him. However, the same shall be subject to deposit of 15% of Rs.10 lakh as compounding fee on or before 30.10.2023 with the Haryana State Legal Services Authority. It is made clear that if the amount is not deposited within the stipulated period, the present petition shall be deemed to have been dismissed and the concerned Chief Judicial

