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

CRR-344-2020 (O&M)
DATE OF DECISION:-15.03.2023

Mahesh @ Ramesh ...Petitioner.

V.

The Primary Cooperative Agriculture
and Rural Development Bank Ltd. Rania
through its Assistant Branch Manager
...Respondent..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Satbir Singh Gill, Advocate
for the petitioner.

Mr. Daljeet Singh, Advocate,
for the respondent.

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HARKESH MANUJA, J.

Challenge in the present revision petition is to the judgment dated 08.01.2020 passed by learned Additional Sessions Judge, Sirsa, whereby the appeal filed against the judgment of conviction dated 09.12.2015 and order of sentence dated 10.12.2015 passed by learned Judicial Magistrate Ist Class, Ellenabad, was dismissed, upholding the same.

The facts of the case are that on account of dishonour of cheque in question, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to "1881 Act") came to be filed at the instance of respondent-Bank against the petitioner, resulting into conviction besides awarding sentence of rigorous imprisonment for a period of 2 years and to pay compensation to the tune of Rs.2,47,000/- (i.e. the double of the cheque amount) within a period of two months from the date of passing of the order and in default of payment, to further undergo rigorous imprisonment for six months, vide order dated 10.12.2015.

Aggrieved thereof, the petitioner filed first appeal before the court of learned Additional Sessions Judge, Sirsa, which was dismissed vide judgment dated 08.01.2020, thereby, upholding the judgment passed by the trial court.

While assailing the aforesaid judgment dated 10.03.2022, learned counsel for the petitioner submits that the petitioner has already discharged his liability towards respondent-Bank as the entire payment stands made and the respondent-Bank has already issued a "No Due Certificate: on 29.01.2020.

In response, learned counsel for the respondent-complainant has filed reply by way of an affidavit of Mr. Sheo Chand, Assistant Bank Manager of the Primary Co. Op. Agriculture and Rural Development Bank Ltd. through its Assistant Manager Branch Rania, District Sirsa in Court today and same is taken on record, wherein, it has been mentioned that the entire dues towards the Bank have been cleared by the petitioner and the bank has already issued a "No Due Certificate" on 29.01.2020.

I have heard learned counsel for the parties and gone through the paper-book.

A conjoint reading of Section 138 read with Section 147 of the 1881 Act, makes it clear that every offence punishable under 1881 Act is compoundable. Section 147 of the aforesaid Act is reproduced hereunder for reference:-

> "*147 Offences to be compoundable. — Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every*

offence punishable under this Act shall be compoundable."

Applying the aforesaid proposition to the facts and circumstances of the present case, the petitioner having settled the dispute with the complainant by making the entire payment, offences committed by the petitioner under Section 138 of 1881 Act, thus, stand compounded.

Furthermore, following the law laid down by the Hon'ble Supreme Court in case of ***"B.V. Seshaiah Vs. The State of Telangana & Anr.,*** 2023(1)R.C.R. (Criminal) 831" the compounding of offence has to be followed by setting aside of conviction order passed by the Court below.

Reference may be made to Paragraph Nos. 10-13 thereof, which are reproduced hereunder:-

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. Dishonour 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.*
>
> *12. It must also be noted that the respondent No.2 was duty-bound to file a compromise petition before the High Court, and by not doing the same has withdrawn key information from the High Court, which has led to an unwarranted confirmation of the Appellants' conviction.*
>
> *13. We, therefore, allow these Appeals and set aside the order of conviction passed by the trial Court. It is, however, kept open to the parties to settle their dispute as per the terms of the Memorandum of Understanding."*

In view of the discussion made hereinabove and to give a quietus to the litigation, the present revision petition is accepted. Accordingly, the judgments of conviction and orders of sentence passed by both the courts below are hereby set aside, resulting in acquittal of the petitioner.

Revision petition is, thus, allowed, subject to payment of costs of Rs.5,000/- to be deposited with the Punjab and Haryana High Court Association Lawyer's Family Welfare Fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of two weeks from today.

15.03.2023 **(HARKESH MANUJA)**
sonika **JUDGE**

whether speaking/reasoned: Yes/No
whether reportable: Yes/No