

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

CRM-M-12528-2016 (O&M)

DATE OF DECISION: 13.07.2023

Naresh Kumar **...Petitioner**

Versus

Narinder Seth **...Respondent**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vivek Salathia, Advocate,
For the petitioner.

Mr. L.M. Gulati, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Petitioner-Naresh Kumar seeks quashing of impugned order dated 30.03.2016 (Annexure P-5) passed by learned Additional Sessions Judge, Amritsar, vide which revision preferred by the petitioner against the order dated 02.03.2016 (Annexure P-3) was dismissed. Further prayer has been made for quashing of order dated 02.03.2016 (Annexure P-3) passed by learned Judicial Magistrate First Class, Amritsar vide which application seeking withdrawal of statement dated 27.11.2015 (Annexure P-2) made in criminal complaint bearing No.3337/14 dated 04.10.2014 under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"), was also dismissed.

2. Succinct facts first, as emanating from the petition.

3. Pledged case is that, Petitioner has been falsely implicated by complainant Narinder Seth (respondent herein) in criminal complaint (Annexure P-1) under Section 138 of the Act. Petitioner started facing the trial in the said complaint but the complainant, who is very influential and clever

person, misguided and allured petitioner and with the sole motive to fasten the liability on petitioner engaged another counsel for the petitioner and got recorded the statement of petitioner with regard to the alleged compromise executed between the parties on 27.03.2016, which was in fact never executed with the free consent of petitioner and was a result of fraud and misrepresentation.

3.1. Petitioner moved application dated 11.11.2016 Annexure P-6 before the trial Court that he be allowed to withdraw the admission statement dated 27.11.2015 (Annexure P-2) and to exercise his right to contest the case on merits. The same was dismissed by the learned Judicial Magistrate, Amritsar vide impugned order dated 02.03.2016 Annexure P-3. Petitioner's revision petition against the said order was dismissed by the learned Additional Sessions Judge, Amritsar vide impugned order dated 30.03.2016 Annexure P-5. Hence, the instant petition before this Court under section 482 of the Code of Criminal Procedure.

4. I have heard the learned counsel for the parties and with their able assistance gone through the record.

5. Learned counsel for the petitioner has strenuously argued that the compromise dated 27.03.2016 was the result of fraud and misrepresentation; that in any case it does not amount to an admission of the criminal offence under section 138 of the Negotiable Instruments Act attributed to the petitioner and therefore, he is entitled to withdraw the admission statement and contest the case on merits.

6. Learned counsel for the respondent has vehemently argued in support of the impugned orders and for dismissal of the petition.

7. Petitioner's statement dated 27.11.2015 alongwith the statement of respondent's counsel (Annexure P-2) is as under:

*“ Statement of accused Naresh Khosla On SA alongwith counsel Sh.Dinesh Srivastava Advocate
Stated that I admit my liability. The cheque in question was issued by me in discharge of my legal liability which was dishonoured when presented for its encashment. Today, compromise has been effected between me and the complainant in the sum of Rs.2,40,000/-. The amount of Rs.40,000/- will be paid by me on 10.12.2015 and the amount of Rs.2,00,000/- will be paid on 27.03.2016. I have issued a cheque bearing No.529280 drawn on Vijaya Bank under my signatures in the name of complainant and that cheque will be encashed on its presentation by the complainant on the due date. If I fall to do so, I will be liable for conviction for the offence punishable under Section 138 NI Act. As the compromise has been effected between me and the complainant, I do not want to cross examine the complainant and I have no objection if the same may be treated as nil.*

RO&AC

Sd/-

(Jaginder Singh)

JMIC/Amritsar 27.11.2015

Statement of Sh. Ravi Mahajan Advocate counsel for complainant.

I have heard the statement of accused. Same is acceptable to me.

RO&AC

Sd/-

(Jaginder Singh)

JMIC/Amritsar 27.11.2015”

8. On its perusal and careful consideration, I am of the opinion that neither it amounts to an admission of the criminal offence under section 138 of the Negotiable Instruments Act attributed to the petitioner nor does it bar/preclude him from contesting his criminal liability in the complaint on merits.

9. The offence under Section 138 *ibid* is punishable with imprisonment for a terms which may extend to two years or with fine which may extend to twice the amount of cheque. Matters of criminal liability and personal liberty are not to be treated lightly and casually. It is obvious from a reading of the petitioner's statement dated 27.11.2015 (Annexure P-2) that the same was only an admission of civil liability made in the backdrop of the alleged compromise with the

complainant. In my opinion, it would be unfair and unjust if, on its basis, the petitioner is denied the opportunity to contest the criminal liability in complaint, cross-examine the complainant and his witnesses and to lead own evidence in defence. As against this, the grant of such opportunity to the petitioner would not cause any serious prejudice to the respondent-complainant. Considering the given facts and circumstances, I am of the opinion that in order to secure the ends of justice, the petitioner should be the opportunity to contest the criminal liability in complaint, cross-examine the complainant and his witnesses and to lead own evidence in defence.

10. In the premise, instant petition is allowed. Impugned Orders passed by learned Revisional Court as well as learned trial Court are set-aside. Learned trial Court is directed to proceed with the matter in accordance with law from the stage at which proceedings were stalled.

11. It is clarified that since trial has to proceed from the stage where it was stalled, the petitioner shall be allowed to proceed further by allowing him to opportunity cross-examine the complainant and likewise permitted to adduce his evidence in his defense. Since trial has remained stalled for a considerable time, it is expected of learned trial Court to conclude the same as expeditiously as possible in order to meet the ends of justice.

12. Disposed of in above terms.

13. Pending application(s), if any, shall also stand disposed of.

JULY 13, 2023
Shalini

(ARUN MONGA)
JUDGE

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