

CRR-637 of 2023 (O&M)

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

CRR-637 of 2023 (O&M)
Reserved on: -29.05.2023
Date of pronouncement: - 02.06.2023

Kharait Lal

.....Petitioner

vs.

Shobhit Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -

Mr. Manu Loona, Advocate,
for the petitioner.

Mr. B.B.S. Randhawa, Advocate,
for respondent No.1.

Mr. Jashanpreet Singh, DAG, Punjab.

NAMIT KUMAR, J.

1. Petitioner has filed the instant revision petition assailing judgment and order dated 15.01.2018 passed by learned Judicial Magistrate Ist Class, Fazilka, whereby he has been convicted and sentenced to undergo rigorous imprisonment for a period of one year under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and to pay compensation amount of Rs.7,65,000/- to respondent No.1-complainant under Section 357(3) Cr.P.C. as also the judgment dated 27.10.2022 passed by the Court of learned Sessions Judge, Fazilka, whereby appeal of the petitioner against the aforesaid judgment of conviction and order of sentence dated 15.01.2018 has been dismissed.

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2. Briefly stated, on 02.07.2016, respondent No.1-complainant Shobhit Kumar through his special power of attorney Rakesh Kumar filed a complaint under Section 138 of the Act against the petitioner on the allegations that petitioner was having business dealings with the firm of complainant and in order to discharge his legal liability towards the complainant, petitioner issued a cheque bearing no.375810 dated 13.05.2016 for an amount of Rs.7,35,000/- drawn on State Bank of India, Branch New Grain Market, Fazilka in favour of respondent No.1-complainant. At the time of issuance of the said cheque, petitioner assured respondent No.1-complainant that the above said cheque will be honoured by the banker of the petitioner as and when the same will be presented by the complainant in his bank for collection purpose. As per assurance of accused, respondent No.1-complainant presented the above said cheque to his banker i.e. HDFC Bank Ltd. Branch, Fazilka for collection purpose, but the same was returned unpaid with the cheque return memo dated 16.05.2016 with the remarks "Funds insufficient". After getting such an information, complainant approached the petitioner and requested him to make the payment of cheque amount, but to no effect. Even issuance of a legal notice dated 23.05.2016 could not bring any fruitful result. Hence, complaint under Section 138 of the Act was instituted.

3. After hearing both the parties and perusing the evidence on record, learned Judicial Magistrate Ist Class, Fazilka, vide judgment of conviction and order of sentence dated 15.01.2018 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 of

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Rs.7,65,000/- to respondent No.1-complainant.

4. The aforesaid judgment and order dated 15.01.2018 were challenged by the petitioner in appeal before the learned Sessions Judge, Fazilka, who, vide judgment dated 27.10.2022, dismissed the same finding it without any merit.

5. 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 as the matter has been compromised between the parties vide compromise deed dated 23.11.2022 (Annexure P-1) and petitioner has paid entire compromised amount to respondent No.1-complainant.

6. 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 Apex Court, it has been held that when the complainant does not have any objection, the proceedings should come to an end.

7. 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***

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another, 2012(4) RCR (Crl.) 543.

8. 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.

9. During the course of preliminary hearing, parties were directed to appear before the trial Court/Area Magistrate for getting their statements recorded with regard to the compromise and the trial Court was directed to record the statements of all the concerned parties, with regard to the genuineness and validity or otherwise of the compromise and send the report to this Court.

10. In compliance thereof, report from Judicial Magistrate First Class, Fazilka, has been received through District and Sessions Judge, Fazilka, with statements of parties, in which, it has been mentioned that the compromise is genuine, voluntary and valid and is not result of any threat or coercion etc. in any manner. The petitioner-accused has not been declared as proclaimed person/offender.

11. Learned counsel for the petitioner and learned counsel for respondent No.1, are ad-idem and submit that as the matter stands compromised, CRM-10949 of 2023 filed under Section 147 of the Act 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

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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.

12. I have heard learned counsel for the parties and perused the record.

13. In the present case, the cheque amount is Rs.7,35,000/-. 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 Rs.1,10,250/-. 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.

14. In view of the above, the impugned judgment of conviction and order of sentence dated 15.01.2018 passed by the learned Judicial Magistrate, 1st Class, Fazilka, and the judgment dated 27.10.2022 passed by the learned Sessions Judge, Fazilka, are set aside; the complaint under Section 138 of the Act stands dismissed and the petitioner stands acquitted of the charge, subject to his depositing the costs of Rs.1,10,250/- 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

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say that the parties shall remain bound by the terms and conditions of the compromise.

15. Pending application(s), if any, stand disposed of in view of the abovesaid judgment.

02.06.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes