(113A) IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-15300-2023 in
CRR-656-2022
Date of Decision: 11.04.2023

RAJ KUMAR

... Petitioner

Versus

STATE OF HARYANA & ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sandeep Lather, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

Mr. Rahul Jaswal, Advocate
for respondent No.2.

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JASJIT SINGH BEDI, J (Oral)

CRM-15300-2023

This is an application filed under Section 482 Cr.P.C. for preponing the date of hearing in the case i.e. fixed for 22.05.2023.

Notice in the application.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana accepts notice on behalf of the respondent-State.

For the reasons mentioned in the application, the same is allowed and the date of hearing is preponed from 22.05.2023 to today and the matter is taken up on board today itself.

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CRR-656-2022

The present revision petition has been filed against the judgment dated 27.01.2022 passed by the Additional Sessions Judge, Sonepat, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 13.02.2020 passed by the learned Judicial Magistrate, 1st Class, Sonepat, has been dismissed.

2. The brief facts of the case are that in the year 2014, the accused/petitioner borrowed a sum of Rs.8,25,000/- from respondent No.2-complainant for the purpose of purchasing flat at Delhi and also for the purpose of promoting the business of his flour mill at Delhi with the assurance to return the borrowed amount by 10.12.2015. Acceding to the request of the accused/petitioner, the respondent No.2-complainant gave the amount of Rs.8,25,000/- to the accused/petitioner and the accused promised to return the same within a year or so. On 12.12.2015, the accused/petitioner issued a cheque bearing No.069118 for an amount of Rs.8,25,000/- drawn on Axis Bank, Branch Sector 24, Rohini with the assurance that the cheque shall be honoured on its presentation by respondent No.2-complainant. On 18.01.2016, respondent No.2-complainant presented the said cheque to his banker State Bank of India with its branch at Village Chitana, District Sonipat but the manager of said bank asked respondent No.2-complainant to present the cheque in the main branch of State Bank of India, Sonipat. The respondent No.2-complainant presented the cheque in State Bank of India, Sonipat for encashment in his account but the same was dishonoured on the

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ground of 'funds insufficient' vide cheque return memo dated 19.01.2016 and respondent No.2-complainant received the information regarding the dishonour of the cheque through registered post on 20.01.2016. The complainant sent a legal notice dated 25.01.2016 through registered post and demanded a sum of Rs.8,25,000/- within a period of fifteen days from the date of receipt of the notice. However, since the accused failed to pay the cheque amount to the complainant-respondent No.2 within the statutory period, respondent No.2-complainant was constrained to file a complaint under Section 138 of the Negotiable Instruments Act, 1881 in which the petitioner-accused was summoned to face the trial.

3. The evidence was led and ultimately, the accused was held guilty and accordingly, convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment for a period of 08 months. The accused/petitioner was also ordered to pay an amount of Rs.10,23,000/- as compensation (cheque amount + interest @ 6 % per annum) to the complainant.

4. Aggrieved against the said judgment of conviction and order of sentence, the accused/petitioner preferred an appeal before the Additional Sessions Judge, Sonepat, which came to be dismissed on 27.01.2022.

5. Still aggrieved, the present revision petition has been preferred by the accused/petitioner. During the pendency of the present criminal revision petition, a compromise has been arrived at between the parties on 18.05.2022. The copy of the settlement/agreement passed by the Mediation

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and Conciliation Centre of this Court is marked as **X**. It would be relevant to mention here that a reading of Section 147 of the Negotiable Instruments Act read with Section 320 Cr.P.C. would show that where a settlement has been effected, the offence under Section 138 of the Negotiable Instruments Act can be compounded on account of the fact that a mutual compromise has been effected between the parties.

6. The learned counsel for the complainant-respondent No.2 has accepted the factum of compromise and has stated that he has no objection if the petitioner is acquitted of the charges framed against him.

7. I have heard the learned counsel for the parties.

8. This Court in 'Ramesh Chander Vs. State of Haryana and another, 2007(1) RCR (Criminal) 245' held as under:-

> *"4. As per the provisions of Section 147 of the Act, the offence under Section 138 is compoundable. Section 147 reads as under:-*
>
> *"Offence to be compoundable-*
>
> *Notwithstanding anything contained in the Criminal Procedure Code, 1973(2 of 1974), every offence punishable under this Act shall be compoundable".*
>
> *5. The compounding of the offence under Section 138 can be done during the trial of the case as well as by the High Court or Court of Session while acting in the exercise of its power of revision under Section 401 Criminal Procedure Code Reference may be made to Section 320(6) Criminal Procedure Code in this regard.*
>
> *6. Further, under Section 320(8) Criminal Procedure Code the composition of an offence shall have the effect of*

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acquittal of the accused with whom the offence has been compounded."

9. This Court in 'Vatsa Electronics Vs. Pala Ram & Anr. decided on 09.03.2022 in CRR-1585-2019' has also held that once a settlement is being effected, then in terms of Section 147 of the Negotiable Instruments Act and Section 320 Cr.P.C., the accused ought to be acquitted as the offence stands compounded.

10. The admitted position is that the matter stands settled and the compromise/settlement between the parties dated 18.05.2022 is already on record.

11. In view of the above, since, the parties have voluntarily settled the disputes between themselves, it is a fit case for allowing them to compound the offence.

12. Accordingly, the revision petition is allowed and the judgment dated 27.01.2022 passed by the Additional Sessions Judge, Sonepat and the judgment of conviction and order of sentence dated 13.02.2020 passed by the learned Judicial Magistrate, 1st Class, Sonepat, are hereby set aside. The petitioner is acquitted of the charges under Section 138 of the Negotiable Instruments Act.

(JASJIT SINGH BEDI)
JUDGE

11.04.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No

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