IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-15570-2023
in /and CRR-832-2023 (O & M)
Date of decision: 03.05.2023

Luxmi Agro Agency and ors. .... Petitioners

V/s

State of Haryana and anr.
...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. V.D. Sharma, Advocate, for the petitioners.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Bhuwan Vats, Advocate,
for the complainant-respondent No.2.

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JASJIT SINGH BEDI, J. (Oral)

The present revision petition has been filed against the order dated 19.11.2022 passed by the Additional Sessions Judge, Karnal, vide which the appeal preferred by the petitioner against the judgment of conviction dated 30.01.2016 and order of sentence dated 01.02.2016 passed by the learned Judicial Magistrate 1st Class, Karnal, has been dismissed.

2. The brief facts of the case are that as per the complainant, the accused company had business transaction and purchased rice from the complainant company. As per the statement of accounts maintained by the complainant company, an amount of Rs.36,78,415/- was outstanding against the accused which had been acknowledged by the accused. In discharge of the aforesaid legal liability, accused No.2-Damodar Vyas on behalf of accused No.1 and 3 issued a cheque bearing No.014825 dated 10.11.2013

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for a sum of Rs.6,13,415/- drawn at Axis Bank Ltd., Alwal Branch, Secunderabad (A.P.) and assured that the cheque would be honoured as and when presented for encashment. On presentation of the aforesaid cheque, the same was returned back with Memo dated 15.11.2013 bearing remarks of 'funds insufficient'. The accused was served with a legal notice dated 20.11.2013 within time but he failed to make the payment, leading to initiation of proceedings under Section 138 of the Negotiable Instruments Act.

3. In the complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the complainant, the petitioners-accused (accused Nos.1 and 3 Luxmi Agro Agency and accused No.2-Damodar Vyas, Proprietor) were summoned to face the trial. The evidence was led and ultimately, accused No.2-Damodar Vyas being proprietor of accused Nos.1 and 2/Companies was held guilty and accordingly, convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to undergo rigorous imprisonment for a period of one year and to pay a compensation of Rs.6,30,000/- in terms of Section 357(3) Cr.P.C. to the complainant within two months from that date i.e. 01.02.2016 and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months. No sentence of fine was imposed upon the accused.

4. That aggrieved against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Additional Sessions Judge, Karnal, which came to be dismissed on 19.11.2022.

5. Still aggrieved, the present revision petition has been preferred by the petitioner. During the pendency of the present criminal revision, an application (CRM-15570-2023) under Section 482 Cr.P.C. for permitting the compounding of the main case/revision petition i.e. criminal case under

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Section 138 of the Negotiable Instruments Act as the parties have amicably settled the dispute with intervention of respectable persons of the society. 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 State counsel for respondent No.1 submits that since the matter has been compromised, therefore, he has no objection if the prayer made in the application for compounding the offence under Section 138 N.I. Act is allowed and the petitioner is acquitted of the charges framed against him.

7. 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.

8. I have heard the learned counsel for both the parties.

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. This Hon'ble Court in <u>'Ramesh Chander Vs. State of Haryana and another, 2007(1) RCR (Criminal) 245'</u> 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:*

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

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 order dated 19.11.2022 passed by the Additional Sessions Judge, Karnal and the judgment of conviction dated 30.01.2016 and order of sentence dated 01.02.2016 passed by the learned Judicial Magistrate 1st Class, Karnal, are hereby set aside. The petitioner is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

13. The petitioner is ordered to be released forthwith in case he is not required in any other case.

(JASJIT SINGH BEDI)
JUDGE

May 03, 2023
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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