

CRR-745 of 2022 (O&M)

2023:PHHC:079507

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

CRR-745 of 2022 (O&M)
Date of decision: - 30.05.2023

M/s Dynamic Developer Enterprises and another

.....Petitioners

vs.

Sachin Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Krishan Sharma, Advocate,
for the petitioners.

Mr. Sukhdeep Singh, Advocate,
for respondent No.1.

Mr. Zorawar Singh, DAG, Haryana.

NAMIT KUMAR, J.

1. Petitioners have filed the instant revision petition assailing judgment of conviction dated 10.05.2018 and order of sentence dated 16.05.2018 passed by learned Judicial Magistrate Ist Class, Karnal, whereby petitioner No.2, being authorised signatory of petitioner No.1-firm, has been convicted and sentenced to undergo simple imprisonment for a period of seven months and to pay compensation equivalent to cheque amount of Rs.6,82,000/- under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and in default of payment of compensation to further undergo simple imprisonment for three months as also the judgment dated 25.01.2022 passed by the Court of learned Sessions Judge, Karnal, whereby appeal of the petitioner against the

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aforesaid judgment of conviction and order of sentence passed by the Court of learned Judicial Magistrate Ist Class, Karnal, has been dismissed.

2. Shorn of unnecessary details, brief facts of the case are that respondent No.1-complainant invested an amount of Rs.33,60,000/- in petitioner No.1-firm being run by petitioner No.2. Lateron, petitioner No.2 agreed to return the amount to respondent No.1 and he issued five post-dated cheques to respondent No.1. On presentation cheque No.516694 dated 01.05.2016 amounting to Rs.6,82,000/- was dishonoured due to insufficient funds. Even issuance of a legal notice dated 08.08.2016 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, Karnal, vide judgment of conviction dated 10.05.2018 and order of sentence dated 16.05.2018 convicted and sentenced the petitioner in the manner as narrated above.

4. The aforesaid judgment and order were challenged by the petitioner in appeal before the learned Sessions Judge, Karnal, who, vide judgment dated 25.01.2022, dismissed the same finding it without any merit.

5. Feeling aggrieved, petitioners have filed the instant revision petition with a prayer that both the aforesaid judgments passed by the Courts below be set aside and the petitioners may be acquitted of the charges levelled against them.

6. Learned counsel for the petitioners submitted parties have compromised the matter before the Mediation and Conciliation Centre of

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this Court vide compromise deed dated 16.11.2022.

7. Learned counsel for the petitioners 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.

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

9. 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.

10. Vide order dated 14.03.2023, 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

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genuineness and validity or otherwise of the compromise and send the report to this Court.

11. In compliance thereof, report from Judicial Magistrate First Class, Karnal, has been received through District and Sessions Judge, Karnal, with statements of parties, in which, it has been mentioned that parties have compromised the matter in dispute without any undue influence or coercion. The petitioners-accused were not declared as proclaimed person/offender.

12. Learned counsel for the petitioners and learned counsel for respondent No.1, are *ad idem* and submit that as the matter stands compromised, CRM-11640 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 petitioners may be allowed and permission may be granted to the parties to compound the offence under Section 138 of 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.

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

14. In the present case, the cheque amount is Rs.6,82,000/-. In view of the law laid down in ***Damodar S. Prabhu's*** case (supra), compounding of the present offence can be allowed provided the petitioners-accused pays 15% of the cheque amount by way of costs. On calculation, 15% of

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the cheque amount comes to Rs.1,02,300/-. 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.

15. In view of the above, the impugned judgment of conviction dated 10.05.2018 and order of sentence dated 16.05.2018 passed by the learned Judicial Magistrate, 1st Class, Karnal, and the judgment dated 25.01.2022 passed by the learned Sessions Judge, Karnal, are set aside; the complaint under Section 138 of the Act stands dismissed and the petitioner(s) stands acquitted of the charge, subject to his depositing the costs of Rs.1,02,300/- with the Haryana 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 say that the parties shall remain bound by the terms and conditions of the compromise.

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

30.05.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes