

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

248

CRR-947-2020 (O&M)
Date of decision: 13.02.2023

SUBHASH RAWAL

....Petitioner

Versus

DALBIR SAINI THROUGH LRS AND ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. L.M. Gulati, Advocate for the petitioner.

Mr. Akshay Jindal, Advocate for LR's of respondent No.1.

AMAN CHAUDHARY. J.

Present petition has been filed against the impugned judgment of conviction dated 16.05.2017 and order of sentence dated 06.07.2017 passed by learned Judicial Magistrate 1st Class, Gurugram vide which the petitioner was convicted and sentenced for one year simple imprisonment under Section 138 of Negotiable Instruments Act.

Briefly put the facts of the case are that the petitioner-accused had taken friendly loan of Rs.15,00,000/- from the complainant. In discharge of his liability the petitioner-accused issued a cheque bearing No. 037357 dated 01.02.2015 for Rs.15,00,000/- in favour of the complainant. That on the assurance and promise of the petitioner-accused that the said cheque would be encashed and honoured on presentation, complainant deposited the cheque. However, to the utter surprise of the complainant, banker of the petitioner-accused returned the said cheque to the banker of

the complainant with the remarks “Fund Insufficient”. In turn, the banker of the complainant intimated the complainant about dishonour of the said cheque vide return memo dated 03.02.2015. The complainant sent a legal notice dated 24.03.2015 to the petitioner-accused but accused failed to make the payment. Hence, the present complaint.

The process against the accused were initiated under Section 138 of the Negotiable Instrument Act, 1881 vide order dated 01.06.2015.

Pursuant to order dated 01.06.2015 accused appeared and was released on bail. Thereafter copy of complaint along with accompanying documents were supplied to the accused free of costs as envisaged under Section 207 of Cr.P.C.

On finding prima facie case under Section 138 of the Negotiable Instrument Act 1881, notice of accusation was served upon the accused vide order dated 01.12.2015 by this court to which he pleaded not guilty and claimed trial.

In order to prove his complaint, complainant entered into the witness box as CW1 and tendered his duly sworn affidavit (Ex. CW1/A) in evidence and his documentary evidence. Thereafter, the complainant vide his separate statement dated 18.01.2017 closed the complainant evidence.

Statement of accused under Section 313 of Cr.P.C was recorded on 20.01.2017 in which accused denied all the allegations raised against him.

In order to substantiate his above stated defence and to rebut the case of the complainant, accused did not examine any witness in his defence. Since accused has failed to conclude the defence evidence, the defence evidence was closed by court order on 27.02.2017.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the complainant has successfully proved the case, bringing home guilt against the petitioner-accused. Accordingly, the accused-petitioner was convicted and sentenced as mentioned in para no.1 above.

Aggrieved, convict-petitioner filed appeal, which was dismissed by the learned Additional Sessions Judge, Gurugram vide impugned judgment dated 24.02.2020.

Hence, the present revision petitions.

Learned counsel for the petitioner states that since, the matter stands compromised between the parties, the petitioner prays for compounding of the offence.

Learned counsel for the LRs of respondent No.1 also admits the factum so compromise and states that he has no objection, if the prayer is accepted.

This Court on the request made by learned counsel for the parties had referred the matter to the Mediation and Conciliation Centre, wherein it was settled on 22.08.2022. Learned counsel for the petitioner submits that in terms of the settlement agreement Rs.8 lacs were to be paid to the complainant by way of three installments amounting to Rs.2,66,666/- each, a fact admitted by the learned counsel for the complainant-respondent. Accordingly, learned counsel for the petitioner prays that offence be permitted to be compounded, in view of as receipt of the amount paid by installments has been affirmed and there being no other amount outstanding.

In the case of **B.V.Seshaiah vs. The State of Telangana and another** 2023 Live Law (SC) 75, Hon'ble The Supreme Court has held thus:

“10. In the case of M/S Meters and Instruments Private Limited & Anr. Vs Kanchan Mehta¹, this court held that the nature of offence under section 138 of the N.I Act is primarily related to a civil wrong and has been specifically 1 2018 (1) SCC 560 made a compoundable offence. The relevant paragraph of the judgment has been extracted herein:

“This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions' cheques were issued merely as a device to defraud the creditors. Dishonor of cheque causes incalculable loss, injury and inconvenience to the Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 payee and credibility of business transactions suffers a setback. At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 amendment specifically made it compoundable.”

11. This is a very clear case of the parties entering into an agreement and compounding the offence to save themselves from the process of litigation. When such a step has been taken by the parties, and the law very clearly allows them to do the same, the High Court then cannot override such compounding and impose its will.”

Hon'ble The Supreme Court of India in the case of

K.Subramanian vs. R.Rajathi (2010) 15 SCC 352 has held as under:-

“6. Having regard to the salutary provisions of Section 147 of Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.

7. xx xx xx

8. The CRL.M.P. No.12804 of 2009 in which the prayer is made by petitioner to permit him to produce affidavits sworn by him on December 1, 2008 as well as affidavit sworn by P. Kaliappan power of attorney holder of R. Rajathi on December 1, 2008, as additional documents is

allowed. CRL. M.P. No.12803 of 2009 in which the petitioner has prayed to permit him to compound the offence and acquit him by setting aside the conviction recorded in Criminal case No. 726/2003 under Section 138 of the Negotiable Instruments Act by Learned Judicial Magistrate, Karur is allowed. The petitioner is permitted to compound the offence. The Order of conviction and sentence recorded by all the Courts are hereby set aside and petitioner is acquitted of the charge leveled against him. All the applications including Review Petition accordingly stand disposed of as also SLP (Crl.) No.6974 of 2008 @ CRL.M.P. No.14586 of 2008 in terms of this Order.”

The compounding of the offence at later stages of litigation in cases under Section 138 of NI Act has been held to be permissible by Hon'ble The Supreme Court of India in a case of **K.M. Ibrahim vs. K.P. Mohammed & Anr.**, 2009 (14) SCALE 262, wherein it was held as under:-

"11. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences.

12. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution."

Considering the peculiarity of facts and circumstances of the case and the fact that the parties have amicably settled the dispute by way of compromise arrived at before the Mediation and Conciliation of this Court vide settlement agreement dated 22.08.2022, the learned counsel for the complainant- respondent having conceded the receipt of the amount and in light of the judgments referred to hereinabove, the petitioner is permitted to compound the offence. The judgment of conviction/order of sentence

recorded by the trial Court and affirmed by the appellate Court are hereby set aside and petitioner is acquitted of the charges framed against him.

The revision petition stands disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

February 13, 2023

M.Kamra

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