

235 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-950-2019 (O&M)

DATE OF DECISION:-02.05.2023

Udham Singh

...Petitioner.

Vs.

Sukhdev and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Onkar Rai, Advocate
for the petitioner.

Mr. Abhimanyu Sharma, Advocate,
for respondent No.1.

Mr. V.K. Gupta, AAG, Punjab.

HARKESH MANUJA, J.

1. Challenge in the present revision petition is to the judgment dated 18.02.2019 passed by the court of learned Additional Sessions Judge, Shaheed Bhagat Singh Nagar, whereby the appeal filed against the judgment of conviction and order of sentence dated 21.05.2015 passed by learned Judicial Magistrate Ist Class, Shaheed Bhagat Singh Nagar, was dismissed, upholding the same.

2. The facts of the case are that on account of dishonour of cheque bearing No.460161 dated 20.12.2010 amounting to Rs.1,40,000/-, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to "NI Act") came to be filed at the instance of respondent No.1-complainant against the petitioner, resulting into

conviction besides awarding sentence of rigorous imprisonment for a period of 2 years and to pay compensation equivalent to the cheque amount, vide order dated 21.05.2015.

3. Aggrieved thereof, the petitioner filed first appeal before the court of learned Additional Sessions Judge, Shaheed Bhagat Singh Nagar, which was dismissed vide judgment dated 18.02.2019, thereby, upholding the judgment passed by the trial court.

4. While assailing the aforesaid judgments passed by both the courts below, learned counsel for the petitioner submits that during pendency of present revision petition, better sense has prevailed and the parties have entered into a compromise dated 12.04.2019 as the petitioner has discharged his liability towards respondent No.1-complainant. The true translated copy of the compromise as well as vernacular of the same which has been produced by learned counsel for the petitioner are taken on record as "Mark X".

5. In response, learned counsel for respondent No.1-complainant admits the factum of compromise and submits that the petitioner has discharged his liability towards respondent No.1-complainant and the entire cheque amount stands paid.

6. I have heard learned counsel for the parties and gone through the paper-book.

7. A conjoint reading of Section 138 read with Section 147 of the 1881 Act, makes it clear that every offence punishable under 1881 Act is compoundable. Section 147 of the aforesaid Act is reproduced hereunder for reference:-

“147 Offences to be compoundable. — Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.”

Applying the aforesaid proposition to the facts and circumstances of the present case, the petitioner having settled the dispute with the complainant having made the entire payment, offence under Section 138 of 1881 Act, thus, stands compounded.

8. Furthermore, following the law laid down by the Hon'ble Supreme Court in case of ***“B.V. Seshaiiah Vs. The State of Telangana & Anr., 2023(1)R.C.R. (Criminal) 831”*** the compounding of offence has to be followed by setting aside of conviction order passed by the Courts below.

Reference may be made to Paragraph Nos. 10-13 thereof, which are reproduced hereunder:-

10. *“In the case of M/s Meters and Instruments Private Limited & Anr. Vs. Kanchan Mehta, 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 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. Dishonour 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.*

12. *It must also be noted that the respondent No.2 was duty-bound to file a compromise petition before the High Court, and by not doing the same has withdrawn key information from the High Court, which has led to an unwarranted confirmation of the Appellants' conviction.*

13. *We, therefore, allow these Appeals and set aside the order of conviction passed by the trial Court. It is, however, kept open to the parties to settle their dispute as per the terms of the Memorandum of Understanding."*

9. In view of the discussion made hereinabove and to give a complete quietus to the litigation, the present revision petition is accepted. Accordingly, the judgments of conviction and orders of sentence passed by both the courts below are hereby set aside, resulting into acquittal of the petitioner.

10. Though, recourse to compromise being available to the petitioner since beginning, however on account of putting burden on the judicial system, the aforesaid order shall be subject to cost of Rs.1,000/- to be

deposited with the Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of two weeks' from today.

02.05.2023
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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned:

Yes/No

whether reportable:

Yes/No