

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

(115)

2023:PHHC:062735  
CRM-M-22118-2023  
Date of Decision: 02.05.2023

Harbans Singh

--Petitioner

Versus

State of Punjab & another

--Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.**

Present:- Mr. Gaurav Dutta, Advocate for the petitioner.

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**RAJESH BHARDWAJ.J (Oral)**

1. Present petition has been filed praying for quashing the impugned complaint no.220 dated 18/19.11.2009 under section 138 of Negotiable Instruments Act titled as Kulwant Singh Vs. Harbans Singh, judgement and order of conviction dated 11.7.2014 passed by learned JMJC, Sangrur, judgement dated 18.4.2017 passed by learned Addl. Sessions Judge, Sangrur, order of arrest warrants dated 4.2.2023 passed by learned CJM, Sangrur along with all the subsequent proceedings arising therefrom on the basis of compromise dated 18.4.2023.

2. As per the facts of the case, petitioner had induced respondent no.2-complainant to pay an amount of Rs.12,00,000/- for sending him to Canada. Rs.5,00,000/- was to be deposited in first installment. An amount of Rs.4,80,000/- was paid in cash along with original passport of respondent no.2 and his wife. In order to discharge his legal liability, the accused/petitioner issued a cheque bearing No.146677 dated 30.9.2009 for a sum of Rs.4,80,000/- in favour of the respondent no.2/complainant drawn at Oriental Bank of Commerce, Sector 47-C, Chandigarh. When the complainant presented the said cheque with his banker, the same was dishonoured vide memo dated 13.10.2009 with remarks "Funds

Insufficient". Thereafter, the respondent no.2-complainant sent a legal notice dated 27.10.2009 to the accused/petitioner requesting him to make payment but despite that, no payment was made and thus, the complaint was filed. On the conclusion of the trial the petitioner was convicted and sentenced by the trial Court vide order dated 11.7.2014 whereby the petitioner was sentenced to undergo rigorous imprisonment for a period of two years under Section 138 of Negotiable Instruments Act. Petitioner was further directed to pay compensation to the tune of cheque amount along with interest @ 9% per annum from the date of issuance of cheque to respondent/complainant as per the provisions of Section 357(3) Cr.P.C. Aggrieved by the same, the petitioner filed an appeal and the Appellate Court also upheld the conviction and sentence as awarded by learned trial Court and thus, dismissed the appeal vide its order dated 18.4.2017. Aggrieved by the same, the petitioner has filed the present petition.

3. Learned counsel for the petitioner has submitted that the dispute amongst the parties was regarding money. He submits that petitioner was prosecuted in the impugned complaint filed by respondent no.2 in which the Trial Court convicted him vide order dated 11.7.2014 and the learned Appellate Court affirmed the same by dismissing the appeal vide impugned order dated 18.4.2017. It is submitted that thereafter arrest warrants of the petitioner have been issued vide order dated 4.2.2023. He submits that parties have amicably settled their dispute and have arrived at a compromise. It is further submitted that in view of the settlement effected between the parties, the prosecution of the petitioner would be nothing but an abuse of the process of the Court and thus, the petitioner be allowed to

compound the offence and he be acquitted of the charge under Section 138 of Negotiable Instruments Act in view of the law laid down by Hon'ble Supreme Court in ***Damodar S. Prabhu Vs. Sayad Babalal H. 2010(2) RCR (Crl.) 851***. He has further relied upon the judgment dated 18.09.2013 passed in ***CRR-3275-2012 titled as Karam Chand Mittal Vs. Gian Chand and another***. He submits that in view of the facts and circumstances of the case the impugned judgement and conviction order dated 11.7.2014 passed by learned JMIC, Sangrur, judgement dated 18.4.2017 passed by learned Addl. Sessions Judge, Sangrur and order of arrest warrants dated 4.2.2023 passed by learned CJM, Sangrur deserve to be quashed.

4. Notice of motion.

5. On the asking of the court, Mr. Karunesh Kaushal, AAG, Punjab accepts notice on behalf of respondent no.1-State and Ms. Srishti Sharma, Advocate accepts notice on behalf of respondent no.2-complainant.

6. Learned counsel for respondent No.2 has affirmed the contentions raised by learned counsel for the petitioner that the parties have arrived at a compromise. She further states that respondent no.2 has no objection if the present petition is allowed.

7. As the parties have amicably settled the matter, so in view of the compromise effected between the parties and the law laid down by the Hon'ble Supreme Court in ***Damodar S. Prabhu's*** case (supra), offence is compounded and the petitioner is acquitted of the charges framed against him under Section 138 of Negotiable Instruments Act, 1881, subject to his depositing Rs.72,000/- (15% of the cheque amount) with the Poor Patients' Welfare Fund, PGIMER, Chandigarh within a period of two weeks from today. The judgement dated 18.4.2017 passed by the learned Addl. Sessions

Judge, Sangrur dismissing the appeal of the petitioner and the judgement dated 11.7.2014 passed by learned JMIC, Sangrur convicting and sentencing the petitioner as stated above and order dated 4.2.2023 issuing arrest warrants against the petitioner passed by learned CJM, Sangrur, are set aside.

8. Petitioner is directed to file receipt of above said amount of Rs.72,000/- in the office within aforesaid period. In case the petitioner fails to deposit the above said amount within 15 days from the date of pronouncement of this order, the office is directed to list the present case in the ordinary list as IOIN for further orders. Petition is allowed in above terms.

(RAJESH BHARDWAJ)  
JUDGE

02.05.2023

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| Whether speaking/reasoned: | Yes/No |
| Whether Reportable:        | Yes/No |