

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

CRR-806-2010 (O&M)
Date of Decision: 23.02.2023

BALJIT KAUR

....Petitioner

Versus

STATE OF PUNJAB & ANR

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. S.K. Chawla, Advocate
 for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

Ms. Nikita, Advocate for
Mr. Kamaldip Singh Sidhu, Advocate
for respondent No.2/complainant.

HARSH BUNGER, J. (Oral)

Petitioner-Baljit Kaur, has filed the present revision petition, challenging the judgment of conviction and order of sentence dated 06.10.2008 (wrongly mentioned as 06.08.2008 in the prayer clause) passed by the Judicial Magistrate Ist Class, Faridkot, upon a complaint bearing No.405 of 01.12.2006, under Section 138 of the Negotiable Instruments Act, titled as "Harcharanjit Singh Vs. Smt. Baljit Kaur" moved by Harcharanjit Singh-respondent No.2. Said judgment of conviction and order of sentence dated 06.10.2008 passed by the Judicial Magistrate Ist Class, Faridkot, has been further upheld by the learned Additional Sessions Judge, Faridkot, vide judgment dated 08.03.2010.

Vide judgment of conviction and order of sentence dated 06.10.2008 passed by the Judicial Magistrate Ist Class, Faridkot, the petitioner was directed to undergo rigorous imprisonment for a period of one year for the offence under Section 138 of the N.I. Act, 1881 and to pay a fine of Rs.3,000/- and in default of payment of fine to further undergo RI for one

month.

The aforesaid judgment of conviction and order of sentence dated 06.10.2008 passed by the learned Judicial Magistrate Ist Class, Faridkot, has been upheld by the learned Additional Sessions Judge, Faridkot, vide judgment dated 08.03.2010.

Learned counsel for the petitioner submits that during the pendency of this revision, one time settlement was effected into between the petitioner and respondent No.2. The petitioner has also filed an application bearing **CRM-2066-2023 in CRR-806-2010**, seeking compounding of the offence under Section 138 of the N.I. Act, 1881. Accordingly, learned counsel for the petitioner has prayed that the offence under Section 138 of the N.I. Act, 1881, may be compounded and conviction of the petitioner may be set aside.

The factum of one time settlement between the petitioner and respondent No.2 has not been disputed by learned counsel appearing for respondent No.2, rather, he very fairly submits that he has no objection, in case, the conviction of the petitioner is set aside.

I have heard learned counsel for the parties and have perused the paper book with their able assistance. Once the parties have settled their dispute, then in terms of the judgment of Hon'ble the Supreme Court in ***Vinay Devanna Nayak v. Ryot Seva Sahakari Bank Ltd., 2008(1) RCR (Criminal) 249***, the offence committed by the petitioner for which he has been convicted, is compoundable. Relevant paras therefrom are extracted below :-

“17. As observed by this Court in **Electronic Trade & Technology Development Corporation Ltd. v. Indian Technologies & Engineers, 1996(1) RCR (Criminal) 592: (1996)2 SCC 739**, the object of bringing Section 138 in the

statute book is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realised this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. (Act 55 of 2002). The said section reads thus:

S.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.

18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.

19. For the foregoing reasons the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him.”

It is noted that in terms of the order dated 07.02.2023 passed by this Court, learned counsel for the petitioner has handed over a copy of receipt whereby Rs.25,000/- has been deposited in the 'Punjab State Legal Services Authority', (which is taken on record and marked as '**Mark A**') on account of compounding fee/costs in terms of judgment rendered by Hon'ble

Apex Court in **Damodar S. Prabhu Vs. Sayed Babalal H. (2010) 5 SCC 633** as clarified by Hon'ble Apex Court in **Madhya Pradesh Legal Services Authority Vs. Pratheek Jain and another (2014) 10 SCC 690**.

In view of aforementioned facts and circumstances, especially the factum of settlement of dispute between the parties, the offence is compoundable, accordingly, the application for compounding is allowed and it is directed that the judgment of conviction and order of sentence dated 06.10.2008 which was upheld vide judgment dated 08.03.2010 passed by Additional Sessions Judge, Faridkot are set aside and the petitioner is acquitted from all the charges leveled against him. The petition is disposed of accordingly.

Pending application/s, if any, shall stand disposed of.

23.02.2023
Amandeep

(HARSH BUNGER)
JUDGE

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