

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-1905-2015(O&M)****Date of Decision: February 10, 2023****ISHAN TEXTILES MILLS PVT.LTD. & ANR**

..... Petitioners

Versus

PUNJAB STATE COOP.BANK LTD.

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ankur Mittal, Advocate with
Ms. Khushaldeep Kaur, Advocate
Mr. Jugam Arora, Advocate and
Mr. Shivam Garg, Advocate for petitioners.

Mr.Karandeep, Advocate for
Mr. J.S. Toor, Advocate for the respondent.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been made to the judgment dated 23.04.2015 passed by the Court of learned Sessions Judge, Chandigarh, whereby an appeal filed at the instance of present petitioner has been partly allowed by modifying the judgment and order of sentence pertaining to an offence under Section 138 of Negotiable Instruments Act 1881, passed by the trial Court on 22.03.2014 by reducing the sentence awarded to the petitioner from RI 1.5 years to RI 6 months.

The facts of the case are that arising out of loan transaction dated 20.07.1999, a cheque bearing No.031495 dated 17.04.2009 for a sum of Rs.2,67,43,356.12 was issued at the instance of petitioner, in favour of respondent. On account of its dishonour a complaint bearing No.5589 dated 04.06.2009 came to be filed against the petitioners

resulting into conviction besides awarding of sentence to the effect of rigorous imprisonment for a period of 1.5 years, vide judgment dated 22.03.2014.

Aggrieved thereof, the petitioners filed first appeal which was partly accepted vide judgment dated 23.04.2015 and the sentence was reduced from RI 1.5 years to RI 6 months. Challenging the aforesaid judgment dated 23.04.2015, present revision petition has been filed.

Learned counsel for the petitioner submits that in pursuance to the dishonour of cheque in question, complaint was filed on 04.06.2009 and during its pendency, the petitioners have already discharged their liability and paid the entire amount due towards the respondent-Bank way back in the year 2010-11. Learned counsel also submits that the delay in discharge of liability on the part of the petitioner was for bona fide reasons as the petitioners were pursuing their legal remedies against the respondent-Bank before the Arbitrator as well as in the Executing Court. He further submits that, in view of the liability having been discharged, the conviction ought to have been set aside by the First Appellate Court.

On the other hand, learned counsel for respondent-Bank submits that though the liability towards the bank stands discharged and even no dues certificate dated 02.06.2022 has been issued by respondent-Bank in favour of petitioners, however, he submits that the petitioners are still to be prosecuted for the offence which they have committed despite having discharged their liability.

I have heard learned counsel for the parties and gone through the paper-book. Admittedly, the parties have settled their dispute. The petitioners have already discharged their liability against the cheques in question with the payment having been deposited with the respondent-Bank, way back during 2010-11. Even an NOC to this effect has also been issued in favour of the petitioner by the respondent-Bank. Learned counsel representing the respondent-Bank has very categorically and specifically in absolute clear terms stated that the parties have already entered into a settlement and the matter already stands settled between them.

A conjoint reading of Section 138 read with Section 147 of the Negotiable Instruments Act 1881, makes it clear that every offence punishable under NI 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 petitioners having discharged their liability followed by issuance of no objection certificate by respondent-Bank, having settled their dispute with the petitioners, offences committed by the petitioners under Section 138 of NI Act thus stand compounded.

Furthermore, following the law laid down by this Court in case of “**B.V. Seshiah Vs. The State of Telangana & Anr.** reported as **2023(1)R.C.R. (Criminal) 831”** the compounding of offence has to be

followed by setting aside of conviction order passed by the Court 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 dutybound 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."*

In view of the discussion made hereinabove and to give a quietus to the litigation the impugned judgment dated 23.04.2015 passed by Court of learned Sessions Judge, Chandigarh, regarding conviction of petitioners under Section 138 of Negotiable Instruments Act and the order awarding sentence to undergo imprisonment for RI of 6 months is hereby set aside. The same is however subject to cost of Rs.25,000/- as

despite of recourse to compromise being available to them on account of putting burden on judicial system.

10.02.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>