

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113

CRR-1566-2023 (O&M)

Date of Decision: 01.09.2023

Isher Ram

...Petitioner

Versus

Bal Krishan

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Mohit Shukla, Advocate for the petitioner.

Mr. Parveen, Advocate for the respondent.

VIKAS SURI, J.

1. By way of filing the present revision petition under Section 401 Cr.P.C. petitioner has challenged the judgment of conviction and order of sentence dated 20.08.2016, passed by Judicial Magistrate Ist Class, Nabha in Complaint Case No.71-T of 19.11.2013/15.03.2016 titled *Bal Krishan vs. Isher Ram*, whereby he has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and sentenced to undergo Simple Imprisonment for a period of one year. Challenge has also been laid to the judgment dated 18.02.2020, passed by Additional Sessions Judge, Patiala, whereby, the appeal of the petitioner was dismissed.

2. Learned counsel for the petitioner has submitted that the matter has been compromised between the parties, which is reduced into writing dated 10.04.2022 (Annexure P-1) and the same has been acted upon to give

effect to the same in letter and spirit. It is submitted that pith and substance of the compromise is contained in para No.3 thereof, which reads as thus:-

“That now the compromise has been effected between both the parties and as per compromise, the second party paid Rs.50,000/- to the first party and the second party paid Rs.10,000/- on 23.01.2023 and Rs.10,000/- on 27.01.2023 and Rs.10,000/- will be paid today before the Hon'ble Court and the remaining amount of Rs.20,000/- will be paid at the time the statement of first party before the Hon'ble Punjab & Haryana High Court at Chandigarh. As such the second party preferred an Criminal Appeal before the Hon'ble Punjab & Haryana High Court at Chandigarh. The First Party has no objection if the orders/judgments of both the lower Courts be set aside.”

3. Learned counsel for the petitioner has further submitted that in light of the above, petitioner-applicant has moved miscellaneous application (CRM-27787-2023) in terms of Section 147 of the Act, seeking permission to compound the offence and for acquittal of the petitioner.

4. Upon notice, complainant-respondent No.2 put in appearance through counsel and has affirmed that compromise has been effected between the parties and in terms thereof, the remaining amount of Rs.20,000/- has been handed over to the complainant through his counsel before this Court, which fact has been noticed in order dated 09.08.2023.

5. Learned counsel for the parties are *ad idem* that the compromise has been executed between the parties of their free Will in the presence of witnesses, without any pressure, coercion or undue influence. They submitted that compromise dated 10.04.2022 (Annexure P-1) has been acted upon to maintain harmony and brotherhood, which was effected

amicably and voluntarily with intervention of respectable of the society.

6. Learned counsel for respondent No.2-complainant has also affirmed that the complainant stands by the compromise and has no objection if the petitioner is acquitted. He refers to the affidavit of the complainant dated 09.05.2023 (Annexure P-2) in that regard.

7. Learned counsel for the petitioner submitted that in ***Damodar S. Prabhu vs. Sated Bablal H., (2010) 5 SCC 663***, while laying down guidelines for compounding of offence under Section 138 of the Act, at a subsequent stage, the Apex Court granted room to the concerned Court for reducing the said costs with regard to specific facts and circumstances of the case. The said principle was followed in ***Madhya Pradesh State Legal Services Authority vs. Prateek Jain and another, (2014) 10 SCC 690***, wherein it was held that if the court finds that it is a result of positive attitude of the parties, the court can always reduce the costs by imposing minimal costs or even waive the same and for that, it would be for the parties, particularly the accused person, to make out a plausible case for waiver/reduction of costs and to convince the court concerned about the same. It is, thus, pleaded that the costs may be waived, keeping in view the poor financial condition of the petitioner. Learned counsel has submitted that during the pendency of the trial, the petitioner had effected a compromise with the complainant and accordingly suffered a statement on 22.02.2015 whereby he had undertaken to make payment of the cheque amount in nine equal monthly instalments payable on 27th of each month. Pursuant to the aforesaid, the petitioner had also made a payment of Rs.4700/- i.e. the first instalment, on 27.03.2015. The said instalments being beyond the financial

capacity of the petitioner, again negotiation had taken place and thereafter, petitioner suffered another statement that he had compromised the matter with the complainant for a sum of Rs.50,000/- and undertaken to make payment of the settled amount in monthly instalments of Rs.2500/- each. Pursuant to the same, petitioner had in fact made payment of Rs.1500/- on 15.11.2015 and another payment of Rs.2000/- on 04.01.2016. However, on account of financial inability, petitioner was not able to make the balance payment and accordingly, was convicted under Section 138 of the Act, vide judgment dated 20.08.2016.

8. Learned counsel for respondent No.2-complainant does not dispute the tight financial condition of the petitioner. It is submitted that it is on account of his poor financial condition, the complainant has settled for less amount than the cheque amount and does not oppose the plea seeking waiver of deposit of costs.

9. I have heard learned counsel for the parties and perused the record.

10. Keeping in view of the above and taking into consideration that the petitioner had pending trial, voluntarily attempted to settle his civil liability on account of dishonour of cheque and accordingly, had made two attempts that did not fructify, which resulted in his conviction, the plea of waiver raised by the petitioner deserves favourable consideration.

11. In the case of *M/s Meters and Instruments Private Limited & Anr. vs Kanchan Mehta, (2018) 1 SCC 560*, this court held that the nature of offence under section 138 of the Act is primarily related to a civil wrong and has been specifically made a compoundable offence. The relevant

paragraph of the aforesaid judgment reads:

“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.”

12. In light of the aforesaid discussion and the law laid down by the Apex Court, the instant revision petition is allowed. Resultantly, the impugned judgments of conviction and order of sentence passed by the Courts below are set aside. The petitioner is acquitted of the charges.

13. All pending application(s), if any, stand disposed of accordingly.

September 01, 2023
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(VIKAS SURI)
JUDGE

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