IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1520-2022(O&M)
Date of Decision: February 15, 2023

Hemant Kumar Bhagat .... Petitioner

Versus

M/s Duggal Properties Pvt. Ltd. ....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Bhupinder Ghai, Advocate for the petitioner.
Mr. Tanmoy Gupta, Advocate for the respondent.

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HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been made to judgment dated 20.07.2022 passed by the Court of learned Additional Sessions Judge, Gurugram, whereby appeal filed at the instance of present petitioner pertaining to an offence under Section 138 of Negotiable Instruments Act 1881, for short 'the Act' against the judgment of conviction and order of sentence passed by the trial Court on 22/27.11.2017 sentencing him to undergo simple imprisonment for a period of one year and to pay a sum of Rs.26 lacs as compensation amount to the complainant, was dismissed.

The facts of the case are that a cheque bearing No.902154 dated 31.03.2015 for a sum of Rs.25,00,000/- was issued at the instance of petitioner, in favour of complainant/respondent on account of financial assistance/ friendly interest free loan transaction dated 06.02.2012. Since the cheque was dishonoured, therefore, a criminal complaint bearing No.8204 of 2015 dated 10.07.2015 came to be filed against the petitioner resulting into conviction, besides awarding simple imprisonment for a period of one year and to pay Rs.26,00,000/- as compensation amount vide judgment dated 22.11.2017.

Aggrieved thereof, the petitioner filed first appeal before the learned Additional Sessions Judge, Gurugram, which was also dismissed vide judgment dated 20.07.2022. Challenging the aforesaid judgment, present revision petition has been filed.

Learned counsel for the petitioner submits that in pursuance to the dishonour of cheque in question, criminal complaint was filed on 10.07.2015 and during its pendency, the petitioner has already discharged its liability and paid the entire amount due towards the respondent-firm. Learned counsel also submits that the delay in discharge of liability on the part of petitioner was for *bona fide* reason as the petitioner was pursuing his legal remedies against the respondent-firm. 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. While referring to order dated 22.07.2022 passed by this Court, learned counsel also submits that the dispute remained only about the payment of 15% amount payable by the petitioner to the respondent, in terms of decision of Hon'ble Supreme Court in the case of ***Damodar S. Prabhu Vs. Syed Babalal H.***, 2010 (2) RCR (Crl.) 851, which even stands paid now to the respondent.

In response, learned counsel for the respondent admits that the entire amount besides 15% towards cost, as per the decision in **Damodar S. Prabhu's** case (supra) already stands paid by the petitioner and thus, the respondent has no objection in case the petition is allowed.

I have heard learned counsel for the parties and gone through the paper-book. Admittedly, the parties have settled their dispute. The petitioner has already discharged his liability against the cheque in question besides even having deposited additional sum towards 15% cost through a demand draft bearing No.511140 dated 13.02.2023 issued by ICICI Bank in favour of respondent. Learned counsel representing the respondent has even accepted the same specifically and in absolute clear terms.

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

> *"**Section 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 discharged his liability by settling the dispute with respondent, offence committed by him under Section 138 of the Act, thus stands compounded.

Furthermore, following the law laid down by this Court in case of "***B.V. Seshaiah 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 Courts below. Reference in this regard can 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."*

In view of the discussion made hereinabove and to give a quietus to the litigation, the petition is allowed. Impugned judgment dated 20.07.2022 passed by Court of learned Additional Sessions Judge, Gurugram as well as order of conviction/ sentence dated 22/27.11.2017 passed by learned trial Court are hereby set aside.

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.15,000/- 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.

15.02.2023 (**HARKESH MANUJA**)
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*