

CRR-1518-2023

2023:PHHC:087059

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

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CRR-1518-2023 (O&M)

Date of decision : 12.07.2023

Manoj Kumar

.....Petitioner

Versus

Naveen Yadav

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Shakti Mehta, Advocate for the petitioner

Mr.Arun Sharma, Advocate for the respondent

AMAN CHAUDHARY, J.

1. The present revision petition has been preferred against the judgment dated 23.10.2019 passed by learned Sessions Judge, Gurugram dismissing the appeal filed against the judgment and order dated 13.08.2016 rendered by learned Sub Divisional Judicial Magistrate, Pataudi, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years along with fine of Rs.2,000/- for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and further directed to pay a sum of Rs.18,00,000/- to the complainant-respondent as compensation.

2. The facts relevant to the present case are that the accused-petitioner issued three cheques of different dates, for a sum of Rs.5.5 lac each, in favour of the complainant-respondent to discharge his liability. However, when the said

cheques were presented, the same were dishonoured and returned vide memo dated 01.08.2012 with remarks “funds insufficient/ refer to drawer”. On the basis of that, a complaint under Section 138 of the Act was filed against the accused-petitioner. Notice of accusation was issued to him, to which he pleaded not guilty and claimed trial.

3. To prove his case, the complainant examined himself as PW1, Krishan Kumar as PW2, Mawasi Ram as PW4 and Tara Chand as PW5. After closure of his evidence, statement of the accused was recorded under Section 313 Cr.P.C., wherein he denied all the allegations and claimed innocence. No evidence in defence was led by him.

4. On scrutinising the evidence led by the parties, the trial Court convicted and sentenced the petitioner as noticed above. Being aggrieved, he filed an appeal, which was dismissed by learned Additional Sessions Judge, Gurugram vide judgment dated 23.10.2019.

5. Challenge to the aforesaid judgments and order has been made in the present revision petition.

6. Learned counsel for the petitioner states that during the pendency of the present petition, parties have settled their dispute. By producing an affidavit dated 04.07.2023 of the complainant-respondent in this regard, he submits that the settled amount has been paid by the petitioner. He prays that the compounding fee be waived off, as the accused is a poor person working as a plumber and sole breadwinner of the family, consisting of a widowed mother, wife and 17 year old daughter. He, having had no money, borrowed the amount from his brother, so as

to pay the same to the complainant, as he wanted to settle the long standing dispute of ten years.

7. Learned counsel for the sole respondent also admits the factum of compromise and states that as per the settlement, the complainant has received the agreed amount. Therefore, he has no objection, if the prayer made by the petitioner is accepted.

8. Heard the learned counsel for the parties.

9. It would be apposite to make a reference to the affidavit sworn by the complainant-respondent, the relevant of which reads thus:

- “1. That I am resident of above-mentioned address.
2. That I state on oath that I have filed two complaints u/s 138 of NI Act against the petitioner vide case bearing no.NIA-83-2014 and NIA-84-2014 in the court of Ld. SDJM Pataudi and with the intervention of respectables of society matter has amicable been settled in both the cases between both of us for total amount of Rs.5,50,000/- in both the above said cases.
3. That I state on oath that in terms of the settlement I have already received an amount of Rs.5,50,000/- by way of DD no.450385 dated 31.05.2023 and 01.06.2023. In this regard settlement agreement has also been executed between both the parties in the presence of respectable and witnesses and the same is appended as Annexure P-2 with the present petition i.e. CRR no.1518 of 2023 titled Manoj Kumar vs Naveen Yadav pending for 07.07.2023 before Hon’ble Punjab and Haryana High Court.
4. That I state on oath that I have already received full and final payment of settlement amount from the petitioner and now there is nothing due against him.
5. That I state on oath that I shall have no objection if the present petition is allowed and the offence is compounded by this Hon’ble Court.
6. That I state on oath that I shall have no objection if the delay of 528 days in filing the above said petition is

condoned and further, I shall have no objection if this Hon'ble Court may please to suspend the sentence of the petitioner.

7. That I state on oath that I am executing affidavit with my own free will and wishes without there being any pressure or undue influence from any side.
8. That I state on oath that the contents of my affidavit are true and correct, nothing is false or kept concealed therein."

10. It would be gainful to refer to the judgment of Hon'ble The Supreme Court in **B.V. Seshiaiah vs. The State of Telangana and another** 2023 Live Law (SC) 75, wherein it was held thus:

"10. In the case of M/S Meters and Instruments Private Limited & Anr. Vs Kanchan Mehta¹, 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. 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."

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."

11. Hon'ble The Supreme Court in the case of **K.Subramanian vs. R.Rajathi** (2010) 15 SCC 352, interpreted the provisions of the Act with Sec 320 Cr.P.C. and held thus:

“6. Having regard to the salutary provisions of Section 147 of Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.

7. xx xx xx

8. The CRL.M.P. No.12804 of 2009 in which the prayer is made by petitioner to permit him to produce affidavits sworn by him on December 1, 2008 as well as affidavit sworn by P. Kaliappan power of attorney holder of R. Rajathi on December 1, 2008, as additional documents is allowed. CRL. M.P. No.12803 of 2009 in which the petitioner has prayed to permit him to compound the offence and acquit him by setting aside the conviction recorded in Criminal case No. 726/2003 under Section 138 of the Negotiable Instruments Act by Learned Judicial Magistrate, Karur is allowed. The petitioner is permitted to compound the offence. The Order of conviction and sentence recorded by all the Courts are hereby set aside and petitioner is acquitted of the charge leveled against him.”

12. The compounding of the offence at later stages of litigation in cases under Section 138 of the Act has also been held to be permissible by Hon’ble The Supreme Court in the case of **K.M. Ibrahim vs. K.P. Mohammed**, (2010) 1 SCC 798, wherein it was held thus:

"11. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences.

12. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution."

13. Reiterating the aforesaid, Hon'ble The Supreme Court in the case of **Damodar S.Prabhu vs. Sayed Babalal H.** 2010(5) SCC 663 had held that in case of dishonour of cheque, accused convicted, there is no stage prescribed for compounding of offence under the Act and it was observed that "It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings." It was further observed that, "Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance."

14. In the peculiarity of facts and circumstances of the case and in light of the judgment in **Damodar S. Prabhu** (supra), the petitioner is permitted to compound the offence. However, this Court is not inclined to accept the prayer for waiving off the compounding fee, but considering the mitigating circumstances of the petitioner brought out by his learned counsel, as noticed above, the same is reduced in view of the afore-referred judgment and he is ordered to deposit an amount of Rs.10,000/- as costs, with the Haryana State Legal Services Authority on or before 30.07.2023. The judgment of conviction/order of sentence recorded by the trial Court and affirmed by the appellate Court are hereby set aside and petitioner is acquitted of the charges framed against him.

15. The revision petition stands disposed of accordingly.
16. Compliance report be forwarded by the Haryana State Legal Services Authority within a week after deposit of the aforesaid amount.

12.07.2023
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No