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

255 CRR-1607-2023 (O&M)
Date of decision : 26.07.2023

Sukhwinder Singh
.....Petitioner

Versus

HDFC Bank Limited and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.JS Grewal, Advocate for the petitioner

Mr.Saurabh Bhardwaj, Advocate for respondent No.1

Mr.Manipal Singh Atwal, DAG, Punjab

AMAN CHAUDHARY, J.

CRM-28889-2023

The present application is for condonation of delay of 74 days in filing the present revision petition, to which learned opposite counsel have no objection.

Having heard the learned counsel for the parties and in view of the reasons stated in the application, the same is allowed. Delay of 74 days in filing the revision petition is hereby condoned.

Main case

1. The present revision petition has been filed challenging judgment dated 31.01.2023 passed by learned Sessions Judge, Fazilka, dismissing the appeal filed against the judgment and order dated 29.07.2022 rendered by learned Judicial Magistrate, 1st Class, Abohar vide which the petitioner was sentenced to undergo rigorous imprisonment for 1½ year and to pay compensation of Rs.2,40,000/-; in default thereof, to further undergo

simple imprisonment for two months.

2. The factual matrix of the case are that KCC limit of Rs.2,40,000/- was made to the accused-petitioner, for which he had executed a loan agreement and other relevant documents in favour of the complainant-respondent No.1. The accused-petitioner had issued a cheque for repayment of the loan, which on presentation got dishonoured on account of insufficient funds. Thereafter, respondent-bank issued legal notice for depositing the loan amount, to which no response was received. A complaint under Section 138 NI Act was filed. Notice of accusation was issued to the accused, to which he pleaded not guilty and claimed trial.

3. To prove its case, the complainant-Bank examined CW-1 Nishant Mehta, authorized representative of Bank, who produced the necessary records regarding issuance of loan to the accused-petitioner. 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 and pleaded false implication for its wrongful gains. No evidence in defence was led by him.

4. On scrutinizing 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 Sessions Judge, Fazilka vide judgment dated 31.01.2023.

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

6. Learned counsel for the petitioner submits that during the pendency of the present petition, the matter stands compromised between the parties and the entire amount has been paid by the petitioner. He further

submits that the petitioner is ready to deposit the compounding fee and thus, he prays for compounding of the offence in view of the law laid down in **Damodar S.Prabhu vs. Sayed Babalal H**. 2010(5) SCC 663.

7. Learned counsel for respondent No.1-Bank also admits the factum of compromise. Therefore, he has no objection, if the prayer made by the petitioner is accepted. He has also filed a short affidavit of Harminder Pal Singh, Senior Manager (Legal Agri.) HDFC Bank, Regional Office, Mohali on behalf of the respondent-Bank, which is taken on record.

8. Heard the learned counsel for the parties.

9. It would be gainful to refer to the judgment of Hon'ble The Supreme Court in **B.V. Seshaiah 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."

10. 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."

11. 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."

12. 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."

13. In the affidavit filed on behalf of respondent-Bank, it has specifically stated that the accused-petitioner accepted his liability and approached the bank with a proposal to settle the matter. In furtherance of compromise, the applicant-bank has recovered an amount of Rs.3,75,000/- on 30.12.2022, as full and final payment, as per settlement and the account of the accused-petitioner has been closed. Thus, the applicant-bank does not want to pursue the above captioned case against the petitioner. It has no objection, if the offence against the accused-petitioner is compounded, if otherwise permitted as per law.

14. In the peculiarity of facts and circumstances of the case and in light of the enunciation of law referred to above, the petitioner is permitted to compound the offence. However, the same shall be subject to deposit of 15% of the cheque amount as compounding fee within one month from today with the Punjab State Legal Services Authority. 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. It is made clear that if the amount is not deposited within the stipulated period, the present petition shall be deemed to have been dismissed and the concerned Chief Judicial Magistrate is directed to take the petitioner in custody.

15. The revision petition stands disposed of accordingly.

16. Compliance report be forwarded by the Punjab State Legal Services Authority, within a week after deposit of the aforesaid amount.

26.07.2023 **(AMAN CHAUDHARY)**
gsv **JUDGE**

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