IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-1758-2022 (O&M)
Date of decision: 07.08.2023

Joginder Singh

....Petitioner

Versus

Mahindra And Mahindra Financial Services Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Raman Mohinder Sharma, Advocate for the petitioner

Mr. Nitin Thatai, Advocate for the respondent

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AMAN CHAUDHARY. J.

1. The present petition has been filed for setting aside the impugned judgment of conviction and order of sentence passed by Sub Divisional Judicial Magistrate, Abohar dated 24.07.2018 and judgment passed byAdditional Sessions Judge, Fazilka dated 01.04.2021.

2. The facts relevant to the present case are that the complainant-company had filed a complaint on 11.11.2014 under Section 138 read with Section 142 of NI Act, against the petitioner with the allegation that he had issued a cheque dated 11.09.2014 for Rs. 4,31,233/- in discharge of his legal liability. The said cheque upon presentation was returned unpaid along with memo dated 12.09.2014, with remarks "funds insufficient". The complainant-company served a demand notice upon the accused to make the payment of unpaid amount but to

no avail. It was further alleged that at the time of issuance of the cheque, the accused was fully aware that his account did not have the sufficient funds. Even after service of demand notice, the accused failed to make good the payment.

3. On the basis of pre-summoning evidence led by the complainant, the accused-petitioner was summoned to face trial under Section 138 of NI Act. In compliance thereof, he put an appearance on 09.07.2015 and vide order dated 16.07.2015, notice of accusations was served upon him, to which he pleaded not guilty and claimed trial.

4. The complainant-company examined its Assistant Manager Gurdeep Singh as CW-I. Thereafter, on 31.05.2018, counsel for complainant tendered some documents and closed documentary evidence on behalf of complainant.

5. On the basis of this, the accused was examined under Section 313 Cr.P.C. where incriminating evidence was put to him, which he refuted and pleaded innocence. He further stated that the cheque in question was furnished as a security that had been misused by the officials of the company. No evidence in defence was led by the accused.

6. On scrutinizing the evidence led by the parties, the trial Court convicted and sentenced the petitioner. Being aggrieved, he filed an appeal, which was dismissed by learned Additional Sessions Judge, Fazilka vide judgment dated 01.04.2021.

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

8. Learned counsel submits that as settled between the parties, petitioner has paid the entire cheque amount. The petitioner is a truck driver, having three

children and old aged ailing parents, no other source of income other than plying the said truck and is not involved in any other case. Thus, he prays for waiving of the compounding fee.

9. Learned counsel for the respondent admits the factum of receipt of cheque amount, as has been settled before the Mediation and Conciliation Centre of this Court on 04.11.2022. Therefore, he has no objection, if the prayer made by the petitioner is accepted.

10. Heard the learned counsel for the parties.

11. 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."

12. 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."

13. 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."

14. 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."

15. 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.5,000/- as costs, with the Punjab State Legal Services Authority on or before 15.09.2023. 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.

16. The revision petition stands disposed of accordingly.

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

(AMAN CHAUDHARY)
JUDGE

07.08.2023
S.Sharma(syr)

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