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

CRR-1892-2022 (O&M)
DATE OF DECISION:-15.02.2023

Surinder Rai ...Petitioner.

V.

Vishwanath Pathak ...Respondent..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Shekhar Choudhary, Advocate
for the petitioner.

Complainant in person along with
Mr. Vinod Kumar Sharma, Advocate.

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HARKESH MANUJA, J.

Challenge in the present revision petition is to the judgment dated 10.03.2022 passed by learned Additional Sessions Judge, Chandigarh, whereby the appeal filed against the judgment of conviction and order of sentence dated 03.08.2017 passed by learned Judicial Magistrate Ist Class, Chandigarh, was dismissed, upholding the same.

The facts of the case are that on account of dishonour of cheque in question, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to "1881 Act") came to be filed at the instance of respondent against the petitioner, resulting into conviction besides awarding sentence of rigorous imprisonment for a period of 1 year and to pay compensation to the tune of Rs.3,30,000/- within a period of one month from the date of passing of the order and in default of payment, to further undergo rigorous imprisonment for three months, vide judgment dated

08.08.2017.

Aggrieved thereof, the petitioner filed first appeal before the court of learned Additional Sessions Judge, Chandigarh, which was dismissed vide judgment dated 10.03.2022, upholding the judgment passed by the trial court.

While assailing the aforesaid judgment dated 10.03.2022, learned counsel for the petitioner submits that the petitioner has already discharged his liability towards respondent and the entire payment stands made.

In response, learned counsel for the complainant submits that the complainant has received the entire amount and nothing remains due towards the petitioner.

I have heard learned counsel for the parties and gone through the paper-book.

A conjoint reading of Section 138 read with Section 147 of the 1881 Act, makes it clear that every offence punishable under 1881 Act is compoundable. Section 147 of the aforesaid Act is reproduced hereunder for reference:-

> "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 settled the dispute with the complainant by making the entire payment, offences committed by the petitioner under Section 138 of 1881 Act, thus, stand compounded.

Furthermore, following the law laid down by the Hon'ble Supreme

Court in case of ***"B.V. Seshaiah Vs. The State of Telangana & Anr.,*** 2023(1)R.C.R. (Criminal) 831" the compounding of offence has to be followed by setting aside of conviction order passed by the Court below.

Reference may 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:*
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> *'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.'*
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> *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.*
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> *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 judgments and orders passed by both the courts below are hereby set aside and the present revision petition is allowed, resulting in acquittal of the petitioner. The same is however, subject to payment of cost of Rs.5,000/- to be deposited with the Punjab and Haryana High Court 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 the date of receipt of certified copy of this order.

15.02.2023 **(HARKESH MANUJA)**
sonika **JUDGE**

whether speaking/reasoned: Yes/No
whether reportable: Yes/No