

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

246

CRR-2083-2019(O&M)

Date of Decision: 20.03.2023

Som Nath

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. G.S. Sandhu, Advocate for the petitioner.

Mr. G.S. Sandhu, Deputy Advocate General, Punjab,
for respondent No. 1.

Mr. Shubham Chandel, Advocate for
Mr. S.K. Singla, Advocate for respondent No. 2.

ASHOK KUMAR VERMA, J. (ORAL)

Petitioner has filed the instant revision petition assailing the judgment and order dated 13.09.2016 passed by the learned Judicial Magistrate Ist Class, Ludhiana, whereby he was convicted and sentenced to undergo rigorous imprisonment for a period of one year under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and also the judgment dated 16.07.2019 rendered by the learned Additional Sessions Judge, Ludhiana, whereby appeal filed by the petitioner against the aforesaid judgment of conviction and order of sentence dated 13.09.2016, was dismissed.

Brief facts of the case are that respondent No. 2-Ram Singh, filed a complaint under Section 138 of the Act read with Section 420 IPC against the petitioner on the allegations that petitioner took a loan of

₹6,00,000/- from the complainant and in order to discharge his liability, he had issued two cheques bearing Nos. 420449 and 420450 dated 21.06.2011 amounting to ₹3,00,000/- each in favour of the complainant. The petitioner at the time of issuance of cheques, had assured that the cheques would be honoured on presentation but on presentation both the aforesaid cheques were returned unpaid vide memos dated 25.06.2011. Despite service of legal notice dated 07.07.2011, the petitioner had failed to make the payment. On the basis of preliminary evidence adduced by respondent No. 2-complainant, petitioner was ordered to be summoned vide order dated 27.07.2011 for the commission of offence under Section 138 of the Act. Petitioner appeared and was granted bail. Finding a *prima facie* case, notice of accusation for the commission of offence under Section 138 of the Act was served upon the petitioner to which he pleaded not guilty and claimed trial. After hearing learned counsel for the parties and on appreciation of evidence on record, the petitioner was convicted and sentenced by the trial Court vide judgment of conviction and order of sentence dated 13.09.2016 as stated above in the opening part of the judgment.

The petitioner had assailed the aforesaid judgment of conviction and order of sentence dated 13.09.2016 in appeal before the learned Additional Sessions Judge, Ludhiana, which was dismissed vide judgment dated 16.07.2019.

Still aggrieved, the petitioner has filed the present revision petition with a prayer that both the aforesaid judgments passed by the Courts below be set aside and the petitioner may be acquitted of the

charges levelled against him.

Vide orders dated 18.11.2019 and 27.11.2019 passed by a co-ordinate Bench of this Court, sentence of the petitioner was suspended, subject to payment of Rs.2,00,000/- to respondent No. 2-complainant, to explore the possibility of some amicable settlement between the parties. Further, vide order dated 28.07.2021 the matter was referred to the Mediation and Conciliation Centre of this Court, at the joint request of learned counsel for the parties for exploring the possibility of some settlement between the parties. As per report dated 10.09.2021, the matter stands compromised between the parties for a sum of Rs.1,75,000/- as per settlement agreement of even date.

Learned counsel for the petitioner *inter alia* contends that the matter has been compromised between the parties before the Mediation and Conciliation Centre of this Court as per Settlement Agreement dated 10.09.2021 and in pursuance thereof, the petitioner had already paid an amount of Rs.1,75,000/- (in cash) to respondent No. 2-Ram Singh-complainant as full and final payment towards the settlement of cheque dispute in between them.

Learned counsel for respondent No. 2 submits that the matter has been compromised between the parties. He also does not dispute the factum of receiving the entire amount of Rs.1,75,000/- from the petitioner. He further submits that he has no objection in case, the present revision is allowed.

Learned counsel for the parties are *ad idem* that since the matter stands compromised, necessary permission may be granted to the

parties to compound the offence under Section 138 of the Act, the impugned judgments and order passed by the trial Court and the Appellate Court may be set aside and the petitioner may be acquitted of the charge(s) framed against him.

I have heard learned counsel for the parties and perused the record.

In ***Tilak Kataria vs. State of Haryana and another, 2021 (3) RCR (Criminal) 404***, wherein, after considering various judgments of the Apex Court, it has been held that when the complainant does not have any objection, the proceedings should come to an end.

The Hon'ble Supreme Court in ***Ramgopal and another vs. State of Madhya Pradesh, 2021(4) RCR (Criminal) 322***, has held that in non-compoundable cases of pre-dominantly private nature, even if compromise is reached after conviction, the proceedings can be quashed under Section 482 Cr.P.C. Further, the compromise in the present case is found to be fully covered in consonance of judgments and directions issued by the Courts in ***Kulwinder Singh and others vs. State of Punjab, 2007(3) RCR (Criminal) 1052*** and ***Gian Singh vs. State of Punjab and another, 2012(4) RCR (Crl.) 543***.

The Hon'ble Supreme Court in ***A.T. Sivaperumal vs. Mohammed Hyath (D) by LRs***, decided on 27.03.2017, has held that once the settlement between the parties has been arrived at, the conviction can also be set aside and the litigation too. Similar view has been taken by a Coordinate Bench of this Court in the case of ***Jagmohan Vs. Sandeep Aggarwal and another, 2021(4) RCR (Criminal) 86***.

After hearing the learned counsel for the parties and taking into consideration the fact that since, the parties have arrived at a compromise and that the same would bring peace and harmony in between them, this Court is of the view that no useful purpose would be served by keeping the petitioner behind bars any more, inasmuch as, he had already faced a protracted trial for around 11 years suffering great mental agony. More so, the offence is compoundable under Section 320 Cr.P.C., therefore, the revision is accepted. The impugned judgment of conviction and order of sentence dated 13.09.2016 passed by the learned Judicial Magistrate Ist Class, Ludhiana and the judgment dated 16.07.2019, passed by the learned Additional Sessions Judge, Sri Muktsar Sahib, are set aside; the complaint under Section 138 of the Act stands dismissed and the petitioner stands acquitted of the charges framed against him.

Needless to say that the parties shall remain bound by the terms and conditions of Settlement Agreement dated 10.09.2021.

Pending application(s), if any, stand disposed of in view of the abovesaid judgment.

20.03.2023

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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No