

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

109

CRR-2002-2023 (O&M)

Date of decision: 11.09.2023

Vijay Kumar Saini

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Kushager Goyal, Advocate for the petitioner

Mr. Jagdish Manchanda, Addl. AG Haryana

Mr. Brijesh Kumar, Advocate
for the complainant-respondent No.2

AMAN CHAUDHARY, J.

1. The challenge in the present criminal revision is to the order dated 03.08.2023 passed by learned Additional Sessions Judge, Sirsa, dismissing the appeal preferred against the judgment of conviction and order of sentence dated 21/24.04.2018 rendered by learned Judicial Magistrate First Class, Sirsa, vide which the petitioner was sentenced to undergo rigorous imprisonment for a period of one year under Section 138 of the Negotiable Instrument Act (for short 'NI Act') and to pay Rs.1,50,000/- as compensation under Section 357(3) Cr.PC to the complainant-respondent No.2.

2. The factual matrix of the case is that the accused-petitioner borrowed a friendly loan of Rs. 1,50,000/- from the complainant-respondent

No.2 and in order to discharge the liability, he issued a cheque of the same amount in his favour. But when the complainant presented the said cheque for encashment through his banker, it was dishonoured with remarks “Funds Insufficient”. Thereafter complainant served a legal notice to the accused to make the payment, but to no avail. Even after service of demand notice, the accused failed to make good the payment. Consequently, the complaint was filed.

3. A notice of accusation was served upon him, to which he pleaded not guilty and claimed trial. To prove his case, the complainant himself appeared as CW-1 and Chandan Kumar as CW2; and tendered cheque Ex.C1, memo Ex.C2 and other documents.

4. The statement of the accused was recorded under Section 313 Cr.P.C. where incriminating evidence was put to him, which he refuted and pleaded innocence. In defence, no evidence was led.

5. 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 the learned Additional Sessions Judge, Sirsa vide judgment dated 03.08.2023.

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

7. Learned counsel at the very outset submits that in view of a compromise dated 29.08.2023 having been arrived at between the parties in the interregnum of filing of the appeal, copy of which is appended as Annexure A-1, an application i.e. CRM-37776-2023, has also been filed under Section 147 of NI Act and 320 CrPC for compounding the offence. As per the settlement, the agreed amount has been paid to the

complainant-respondent No.2. In this regard, his affidavit has been annexed with the petition alongwith Annexure A-1. He further submits that the petitioner is ready to deposit the compounding fee and thus, 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.

8. On receipt of advance notice, Mr.Jagdish Manchanda, Additional Advocate General, Haryana puts in appearance on behalf of respondent No.1. Mr.Brijesh Kumar, Advocate, who appears on behalf of complainant-respondent No.2, affirms the factum of compromise, receipt of amount as per the settlement and on instructions, submits that there is no objection, if the prayer made by the petitioner is accepted.

9. Heard the learned counsel for the parties and perused the file.

10. It would be gainful to refer to the judgment of Hon'ble The Supreme Court in **B.V. Sessaiah 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 NI Act with Section 320 Cr.P.C., and held thus:

“6. Having regard to the statutory 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. All the applications including Review Petition accordingly stand disposed of as also SLP (CrI.) No.6974 of 2008 @ CRL.M.P. No.14586 of 2008 in terms of this Order.”

12. The compounding of the offence at later stages of litigation, in cases under Section 138 of NI Act, is permissible as per the ratio laid down

by Hon'ble The Supreme Court in the case of **K.M. Ibrahim vs. K.P. Mohammed**, (2010) 1 SCC 798 which reads 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.** (supra) 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."

14. In the peculiarity of facts and circumstances of the case and in light of the enunciation of law referred to above, CRM-37776-2023 is allowed. The petitioner is permitted to compound the offence. 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. The petitioner be released

forthwith, if not required in any other case. However, the same shall be subject to deposit of 15% of the cheque amount as compounding fee within two months from today with the Haryana State Legal Services Authority. 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 Haryana State Legal Services Authority, within a week after deposit of the aforesaid amount.

17. Pending application, if any, shall stand disposed of.

(AMAN CHAUDHARY)
JUDGE

11.09.2023

Ankur/gsv

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No