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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2308-2022 (O&M)
Date of Decision: 17.01.2023

ISHER RAMPetitioner

Versus

BHARAT MITTAL ...Respondent

CORAM: HON’BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sanjeev Manhas, Advocate
for the petitioner.

Mr. Rajesh K. Chaudhary, Advocate
for the respondent.

HARSH BUNGER, J. (Oral)

CRR-2308-2022

The petitioner has been convicted for offence punishable under Section 138 of the Negotiable Instruments Act (in short “NI” Act) vide judgment of conviction and order of sentence dated 10.05.2018, passed by Judicial Magistrate, First Class, Nabha, whereby, the petitioner was sentenced as under:-

Offence u/s	Sentence
138 of the Negotiable Instruments Act, 1881	Simple imprisonment for 03 months with further direction to pay Rs.50,000/- to complainant.

The aforesaid judgment of conviction and order of sentence dated 10.05.2018, passed by Judicial Magistrate, First Class, Nabha, has been upheld by the Court of Additional Sessions Judge, Patiala, vide order dated 03.01.2022 and the petitioner was taken into custody to undergo the

sentence imposed upon him.

The petitioner has filed the instant petition against the above-said judgment of conviction and order of sentence dated 10.05.2018, passed by Judicial Magistrate, First Class, Nabha and also the order dated 03.01.2022 passed by Additional Sessions Judge, Patiala vide which sentence of the accused/petitioner was upheld. Along with the present petition, an application bearing CRM-41615 of 2022 for compounding of offence has also been filed inter alia on the ground of amicable settlement between the parties.

Learned counsel for petitioner has relied upon *Damodar S. Prabhu v. Sayed Babalal H. 2010(2) RCR (Criminal) 851* and *Kaushalya Devi Massand v. Roopkishore, 2011(2) RCR (Criminal) 298* to contend that the compromise in question would definitely go in long way to strengthen the mutual relationship between the parties and would serve as an ever lasting tool in their favour. It is submitted that this exercise would be in consonance with the spirit of Section 147 of the Negotiable Instruments Act as endorsed in Damodar S. Prabhu's (supra).

Vide order dated 15.11.2022, the sentence imposed upon the petitioner-Isher Ram was suspended and the parties were directed to appear before Illaqa Magistrate/trial Court for recording of their respective statements with regard to compromise.

In compliance of the order dated 15.11.2022, the Judicial Magistrate First Class, Nabha has submitted its report, vide letter dated 02.10.2023 which indicates that the parties appeared before the Magistrate and got recorded their respective statements with regard to the validity of the compromise. Relevant extract of the said report is reproduced as under:-

“It is humbly submitted that in compliance of order passed by Hon'ble Punjab & Haryana High Court in CRR-2308-2022 (O&M), titled as "Isher Ram Vs. Bharat Mittal", the accused namely Isher Ram appeared on 19.12.2022 before the Court of the undersigned and he got his statement recorded to the effect that he has amicably settled the matter with the complainant Bharat Mittal son of Raj Kumar Mittal. Their compromise is voluntary, genuine, without any coercion or undue influence. He has not been declared as PO in the present case and he is also not involved in any other criminal case. He is only accused in the present case. As proof of identification he produced on record self attested photocopy of his adhar card Ex.P2. Copy of compromise is Ex.P3 and copy of affidavit Mark A.

Complainant Bharat Mittal son of Raj Kumar also appeared on 19.12.2022 before the Court of the undersigned and he got his statement recorded to the effect that the present complaint was filed by him against accused Isher Ram son of Jagga Ram, resident of Bajigar Basti, inside Patiala Gate Nabha only. Now, he has amicably compromised the matter with accused Isher Ram son of Jagga Ram. Accused has not been declared as PO in the present case. Now, he has no grudge against the accused Isher Ram son of Jagga Ram. He has compromised the matter with accused Isher Ram son of Jagga Ram. The compromise is voluntary, genuine, without any coercion or undue influence. He has no objection if present complaint against accused Isher Ram son of Jagga Ram is quashed by Hon'ble High Court. As proof of identification he has produced on record self attested photocopy of his Adhar Card Ex.P1. Copy of compromise is Ex.P3 and copy of affidavit Mark A.

In view of the statements of parties, report as sought by Hon'ble Punjab & Haryana High Court in para-wise is as under:-

- 1. The compromise deed Ex. P3 is signed by both the parties concerned with the matter.*
- 2. From the aforesaid statements of the affected parties, it is clear that the parties have entered into compromise voluntarily, without any pressure or undue influence and said compromise appears to be genuine.”*

Learned counsel representing respondent No.2/complainant submits that he has no objection if the application for compounding is

allowed as the matter has already been settled/compromise.

I have considered the submissions made on behalf of the respective parties and have perused the paperbook.

Section 147 of the NI Act provides that every offence punishable under the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), shall be compoundable.

The Hon'ble Supreme Court in the case of **K.M.Ibrahim V. K.P.Mohammed 2010 (1) SCC 798** has held as follows:

“9. The golden thread in all these decisions is that once a person is allowed to compound a case as provided for under section 147 of the Negotiable Instruments Act the conviction under Section 138 of the said Act should also be set aside. In the case of Vinay Devanna Nayak (supra), the issue was raised and after taking note of the provisions of Section 320 Cr.P.C. this Court held that since the matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of conviction and sentence recorded by all the Courts were set aside and the appellant was acquitted of the charge leveled against him.

10. XXX XXX XXX

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. The various decisions cited by Mr. Rohtagi on this issue does not add to the above position.

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.”

After considering the aforestated legal position and also the fact that the parties have amicably settled the dispute, the parties are allowed to compound the offence under Section 138 of Negotiable Instruments Act.

So far as payment of amount equivalent to 15% of the cheque amount in terms of ratio of Damodar S. Prabhu's case (supra) is concerned; a Co-ordinate Bench of this Court in Iqbal Singh V/s HDFC Bank, 2020(2) RCR (Criminal) 571, observed as under:-

“I am of the view that Section 147 of the Negotiable Instruments Act does not contain any guideline or procedure for proceeding with the compounding of the offences. Since scheme under Section 320 Cr.P.C cannot be followed in stricto sensu, therefore, Hon'ble Apex Court has also clarified that in order to discourage chronic litigants from delaying the composition of the offence under Section 138 of the Act, the scheme for imposing costs is considered to be a valid means to encourage compounding at the earliest. Valuable time of the Court is also involved in the trial of the cases and the parties are not liable to pay any Court fee in such

proceedings, even though the impact of the offence is largely confined to the private parties. The imposition of costs would be a matter of discretion of the Court...”

Keeping in view the fact that the parties have amicably resolved their differences and the respondent is fully satisfied, therefore, in view of the nature of litigation fought by the parties and considering that cheque amount was Rs.50,000/-, I am of the view that 15% of the cheque amount towards cost(s) of litigation can be reduced to Rs. 3,000/- in the interest of justice.

In view of the above, the present petition is allowed subject to deposit in Poor Patients Welfare Fund, PGIMER, Chandigarh and the judgment and order of conviction dated 10.05.2018, passed by Judicial Magistrate, First Class, Nabha as well as the order dated 03.01.2022 passed by Additional Sessions Judge, Patiala, are set aside. Resultantly, the petitioner shall be deemed to have been acquitted of the charged offences for all intents and purposes.

This criminal revision is disposed of in the aforesaid terms.

All pending application(s), if any, shall stand disposed of.

17.01.2023
Amandeep

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No