

CRM-M-50815-2022 (O&M)

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(247) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-50815-2022 (O&M)
Date of Decision: 30.05.2022

VINOD KUMAR

... Petitioner

Versus

RAJESH KUMAR

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sandeep Punchhi, Advocate
for the petitioner.

Mr. H.S. Jalal, Advocate
for the respondent.

JASJIT SINGH BEDI, J.

The present petition has been filed for quashing of Complaint CIS. NIA No.1751 of 2013 dated 11.07.2013 (Annexure P-1) filed by the respondent under Section 138 of the Negotiable Instruments Act and all other consequential proceedings arising therefrom on the basis of compromise dated 01.10.2022 (Annexure P-4) and also for quashing of judgment and order dated 06.12.2017/06.12.2017 (Annexure P-2) passed by CJM Sirsa and the judgment dated 28.10.2021 (Annexure P-3) passed in appeal by the Additional District Judge, Sirsa on the basis of compromise dated 01.10.2022 (Annexure P-4) entered into between the parties.

2. The brief facts of the case are that in discharge of his legal liability, the petitioner/accused issued a cheque No.008508 dated 10.06.2013 for an amount of Rs.2,70,000/- to the complainant and the same came to be

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dishonoured with the remarks 'funds insufficient'. A legal notice dated 15.06.2013 was served upon the accused requiring him to make the payment of the cheque within the stipulated period. However, since the accused failed to pay the cheque amount to the complainant within the statutory period, the complainant was constrained to file a complaint under Section 138 of the Negotiable Instruments Act, 1881 in which the accused was summoned to face the trial.

3. The evidence was led and ultimately, the accused was held guilty and accordingly, convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo rigorous imprisonment for a period of 01 year. The accused was also ordered to pay an amount of Rs.2,70,000/- as compensation to the complainant within a period of two months.

4. Aggrieved against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Additional Sessions Judge, Sirsa, which came to be dismissed on 28.10.2021.

5. Still aggrieved, the present quashing petition has been preferred by the petitioner. During the pendency of the present petition, vide order dated 01.03.2023 this Court had directed the parties to appear before the Trial Court/Illaq Magistrate for getting their statements recorded with regard to the compromise dated 01.10.2022 (P-2). It would be relevant to mention here that a reading of Section 147 of the Negotiable Instruments Act read with Section 320 Cr.P.C. would show that where a settlement has been effected, the offence under Section 138 of the Negotiable Instruments Act can be

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compounded on account of the fact that a mutual compromise has been effected between the parties.

6. The learned counsel for the complainant-respondent has accepted the factum of compromise and has stated that he has no objection if the petitioner is acquitted of the charges framed against him.

7. I have heard the learned counsel for both the parties.

8. This Court in 'Ramesh Chander Vs. State of Haryana and another, 2007(1) RCR (Criminal) 245' held as under:-

“4. As per the provisions of Section 147 of the Act, the offence under Section 138 is compoundable. Section 147 reads as under:-

“Offence to be compoundable-

Notwithstanding anything contained in the Criminal Procedure Code, 1973(2 of 1974), every offence punishable under this Act shall be compoundable”.

5. The compounding of the offence under Section 138 can be done during the trial of the case as well as by the High Court or Court of Session while acting in the exercise of its power of revision under Section 401 Criminal Procedure Code Reference may be made to Section 320(6) Criminal Procedure Code in this regard.

6. Further, under Section 320(8) Criminal Procedure Code the composition of an offence shall have the effect of acquittal of the accused with whom the offence has been compounded.”

9. This Court in 'Vatsa Electronics Vs. Pala Ram & Anr. decided on 09.03.2022 in CRR-1585-2019' has also held that once a settlement is being effected, then in terms of Section 147 of the Negotiable Instruments Act and

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Section 320 Cr.P.C., the accused ought to be acquitted as the offence stands compounded.

10. In view of the above, since, the parties have voluntarily settled the disputes between themselves, it is a fit case for allowing them to compound the offence.

11. Accordingly, the present petition is allowed and the judgment and order dated 06.12.2017/06.12.2017 (Annexure P-2) passed by CJM, Sirsa and the judgment dated 28.10.2021 (Annexure P-3) passed in appeal by the Additional District Judge, Sirsa, are hereby set aside. The petitioner is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

(JASJIT SINGH BEDI)
JUDGE

30.05.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No