

CRR-2707-2019 (O&M)

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

CRR-2707-2019 (O&M)

Date of Decision: 18.01.2023

Kirpal Singh

... Petitioner

Vs.

M/s Brass Trading Company

... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr. Ravi Gakhar, Advocate
for the petitioner.

Mr. Ramandeep Singh, Advocate
for the respondent

DEEPAK MANCHANDA, J.(Oral)

Petitioner has filed the instant revision petition assailing judgment dated 06.09.2019 passed by the Additional Sessions Judge, Patiala whereby the appeal of the petitioner has been dismissed wherein the judgment of conviction and order of sentence dated 18.08.2017 passed by the Judicial Magistrate 1st Class, Samana were challenged. It is further submitted that vide judgment dated 18.08.2017, the petitioner was sentenced to undergo simple imprisonment for a period of two years under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and to pay compensation of Rs. 9,55,000/- under 357 (3) Cr.P.C. to the respondent-complainant as also the judgment dated 06.09.2019 passed by

the Additional Sessions Judge, Patiala whereby the appeal of the petitioner against the aforesaid judgment of conviction and order of sentence dated 18.08.2017 has been dismissed.

Briefly stated that the complainant is a sole proprietorship being run under the name and style of M/s Brass Trading Company, Commission Agent, Patran, Tehsil Patran, District Patiala. The accused borrowed an amount of Rs. 9,00,000/- on 08.11.2012 from the complainant for his domestic needs and in this regard an entry was made in the *Rokar* of complainant. The accused also appended his signatures on said entry after receiving loan amount, who settled his account on 12.03.2013 and an amount of Rs. 55,000/- had become due as interest on borrowed amount @ 1.50% per month upto 12.03.2013 and an entry regarding this was made in the account books. The Accused appended his signatures on the said entry and admitted the interest amount. The entry dated 08.11.2012 and 12.03.2013 were carried in the account books for the year 2012-13. All the entries were written in the *rokar* as well as in the account books. The accused after settling the account, issued a post dated cheque bearing No. 043364 dated 23.03.2013 of Rs.9,55,000/- drawn at HDFC Bank, branch Patran, District Patiala vide his bank Account No. 13931700000576 in favour of complainant's firm for discharging his debt and liabilities with promise that he will return the said amount on or before 23.03.2013 failing which the complainant will have liberty to present this cheque for realization of the amount. On 23.03.2013, complainant presented the said cheque for its collection and encashment with its banker, but the same was returned unpaid vide memo dated 25.03.2013 of the HDFC Bank, Branch

Patran, District Patiala mentioning the reasons 'Funds Insufficient'. The accused was approached to make payment but he failed to do the same. Thereafter, the complainant-firm sent a legal notice dated 26.03.2013 to the petitioner calling upon him to make the payment and no payment was made and then the complaint under Section 138 of the Act was instituted on 03.05.2013.

Feeling aggrieved, petitioner has filed the instant 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. During pendency of the present petition, the CRM No.45918/2022 under section 482 of Cr.P.C has been filed for quashing of complaint along-with all the consequential proceedings on the basis of settlement as the matter has been compromised between the parties vide compromise deed dated 19.07.2022 (Annexure P-1) and petitioner has paid entire compensation amount to respondent- complainant.

In the present case, notice was issued on 17.10.2019. The petitioner, without prejudice to his rights and contentions, expressed his willingness to pay a sum of Rs.1 lac to the complainant. Accordingly, the sentence of the petitioner was suspended in view of depositing amount of Rs. 01 Lac in favour of the respondent-complainant before the Registrar (Judicial) of this Court and the same has been complied with and the requisite receipt is on record and vide CRM No.45917/2022, the application under section 482 of Cr.P.C for releasing of said amount has also been filed.

Learned counsel for the parties submit that since the matter stands compromised the CRM No.45918/2022 under section 482 of Cr.P.C

has been filed for quashing of complaint alongwith all the consequential proceedings on the basis of settlement and Learned counsel for the petitioner prays that offence be compounded under section 147 of the act and application be allowed and permission may be granted to the parties to compound the offence under section 138 of the Act in view of the law laid down by the Hon'ble Supreme Court in **Damodar S.Prabhu Vs. Sayed Babalal H,2010 (2) RCR (Criminal) 851** and the impugned judgements and order passed by the trial court and the Appellate Court may be set aside and the petitioner be acquitted of the charge.

I have heard learned counsel for the parties and perused the record, where the matter has been amicably settled between the petitioner and the complainant.

In the case of **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 Court 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 (CrI.) 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**.

In view of the principles laid down in conspectus of aforesaid judicial precedents and the settlement deed dated 19.07.2022, the impugned judgment of conviction and order of sentence dated 18.08.2017 passed by the Judicial Magistrate, 1st Class, Samana and the judgment dated 06.09.2019 passed by the Additional Sessions Judge, Patiala are set aside. Further, the complaint under Section 138 of the Act stands quashed and the petitioner is acquitted of the charge in view of the fact that the petitioner has already paid the entire cheque amount to the respondent-complainant as per settlement dated 19.07.2022 and in view of statement made by the respondent-complainant before the Additional Civil Judge (Sr. Division), Samana in Execution Petition No. Ex/75/2016 dated 30.05.2022 (Annexure P-2).

The present petition is allowed in the aforementioned terms. Needless to say that the parties shall remain bound by the terms and conditions of the compromise.

Further, CRM-No.45917/2022 is allowed and amount of Rs.1,00,000/- deposited by the petitioner in compliance of order dated 17.10.2019 is ordered to be released to the petitioner.

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

above-said judgment.

Copy of this order be forwarded to the trial Court to ensure compliance.

Revision petition is disposed of in the aforesaid terms.

Since the main case is disposed of, pending application(s), if any, shall also stand disposed of.

(DEEPAK MANCHANDA)
JUDGE

18.01.2023
seema

Whether speaking/reasoned	Yes
Whether Reportable	Yes /No