

247 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2753-2019 (O&M)

DATE OF DECISION:-11.04.2023

Narinder Singh

...Petitioner.

Vs.

Raj Kumar and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Raj Kumar Rathore, Advocate
for the petitioner.

Mr. Ajay Beniwal, Advocate for
Mr. Vivek Goyal, Advocate,
for respondent No.1.

Mr. R.K. Ambavta, AAG, Haryana,
for respondent No.2-State.

HARKESH MANUJA, J.

Challenge in the present revision petition is to the judgment dated 05.09.2019 passed by the court of learned Sessions Judge, Panchkula, whereby the appeal filed at the instance of petitioner against the judgment of conviction and order of sentence dated 11.06.2018 passed by the court of learned Additional Chief Judicial Magistrate, Panchkula, was dismissed, upholding the same.

The facts of the case are that on account of dishonour of cheque bearing No.040885 dated 25.01.2016, amounting to Rs. 2 lakh, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to "1881 Act") came to be filed at the instance of respondent-Raj

Kumar against the petitioner, resulting into conviction besides awarding sentence of simple imprisonment for a period of 01 year and to pay compensation to the tune of Rs.2,00,000/- i.e. the cheque amount along with 6% interest from the date of presentation of cheque till its realization, vide order dated 11.06.2018 passed by the court of Additional Chief Judicial Magistrate, Panchkula.

Aggrieved thereof, the petitioner as well as respondent No.1 filed two separate appeals before the court of learned Sessions Judge, Panchkula, which were dismissed vide judgment dated 05.09.2019, thereby, upholding the judgment passed by the trial court.

While assailing the aforesaid judgments passed by both the courts below, learned counsel for the petitioner submits that the petitioner has already discharged his liability towards respondent No.1 as the entire payment against the cheque in question stands made.

In response, learned counsel for respondent No.1-complainant has filed an affidavit of respondent No.1-Raj Kumar, today in Court and same is taken on record, wherein, it has been mentioned that the matter has been settled between the parties and the entire payment has been made by the petitioner to respondent No.1.

I have heard learned counsel for the parties and gone through the paper-book.

A conjoint reading of Section 138 read with Section 147 of the 1881 Act, makes it clear that every offence punishable under 1881 Act is compoundable. Section 147 of the aforesaid Act is reproduced hereunder for

reference:-

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

Applying the aforesaid proposition to the facts and circumstances of the present case, the petitioner having settled the dispute with the complainant by making the entire payment, offence committed by the petitioner under Section 138 of 1881 Act, thus, stands compounded.

Furthermore, following the law laid down by the Hon'ble Supreme Court in case of ***“B.V. Sessaiah Vs. The State of Telangana & Anr., 2023(1)R.C.R. (Criminal) 831”*** the compounding of offence has to be followed by setting aside of conviction order passed by the Courts below.

Reference may be made to Paragraph Nos. 10-13 thereof, which are reproduced hereunder:-

10. “In the case of M/s Meters and Instruments Private Limited & Anr. Vs. Kanchan Mehta, 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. Dishonour 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.*

12. *It must also be noted that the respondent No.2 was duty-bound to file a compromise petition before the High Court, and by not doing the same has withdrawn key information from the High Court, which has led to an unwarranted confirmation of the Appellants' conviction.*

13. *We, therefore, allow these Appeals and set aside the order of conviction passed by the trial Court. It is, however, kept open to the parties to settle their dispute as per the terms of the Memorandum of Understanding."*

In view of the discussion made hereinabove and to give a complete quietus to the litigation, the present revision petition is allowed. Accordingly, the judgments of conviction and orders of sentence passed by both the courts below are hereby set aside, resulting into acquittal of the petitioner.

Though, recourse to compromise being available to the petitioner since beginning, however on account of putting burden on the judicial

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Rs.10,000/- which is to be deducted from the amount of Rs.20,000/- already deposited by the petitioner before the Registrar (Judicial) of this Court, in compliance of the order dated 22.10.2019 and the same is directed to be deposited with the Punjab and Haryana High Court Association Lawyer's Family Welfare Fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of four weeks from today. It is further directed that the remaining amount of Rs.10,000/- be returned to the petitioner as per rules.

11.04.2023
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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No