

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

[110+244]

CRR-2775-2019 (O&M)
Date of decision: 31.08.2023

Kur Lal @ Kunwar Lal

....Petitioner

Versus

State of U.T. Chandigarh and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Shivam Garg, Advocate for
Mr. Ankur Mittal, Advocate for the petitioner.

Ms. Roopse Sharma, Advocate for
Mr. Anil Kumar Lamdharia, APP. U.T. Chandigarh.

Mr.VPS Mithewal, Advocate for respondent No.2.

AMAN CHAUDHARY, J.

1. The present revision petition has been filed against the judgment dated 06.06.2011 passed by learned Additional Sessions Judge, Chandigarh, dismissing the appeal preferred against the judgment/order dated 03.06.2009 rendered by Judicial Magistrate, 1st Class, Chandigarh, vide which the petitioner was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 3,000/- and in default thereof, to undergo further rigorous imprisonment of five days for the offence punishable under Section 138 Negotiable Instruments Act, 1881 (for short 'the Act').

2. The brief facts of the case are that a sum of Rs.2,37,000/- was borrowed by accused-petitioner from the complainant-respondent as friendly loan with a promise to repay within a period of three months. After expiry of said period, to discharge his liability, the petitioner handed over a cheque to the complainant-respondent, which on presentation got dishonoured and returned vide memo dated 24.02.2006 with remarks "*funds insufficient*". A complaint under Section 138 of the Act was filed against the accused-petitioner. Notice of accusation was issued to him, to which he pleaded not guilty and claimed trial.

3. In order to prove his case, the complainant examined himself as CW-1 and placed on record certain documents. After closure of his evidence, statement of the accused was recorded under Section 313 Cr.P.C., wherein he denied all the allegations and claimed innocence. In defence, he examined one Fateh Singh.

4. 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, but the same was dismissed by the Appellate Court vide its judgment dated 06.06.2011.

5. Hence, the present revision petition.

6. Learned counsel for the petitioner submits that though during the pendency of the appeal, a settlement had been arrived at between the parties and matter between them was resolved, however, the said compromise could not be brought to the notice of learned Appellate Court by the petitioner or the complainant, as they were not aware of any such legal requirement. Due to the said inadvertent error on the part of the complainant and the petitioner, the

compromise could not be taken note of and consequently, the appeal filed by the petitioner was dismissed. Pursuant to the order dated 12.02.2020 passed by this Court, the petitioner has already deposited the compounding fee in view of the law laid down in **Damodar S.Prabhu vs. Sayed Babalal H.** 2010(5) SCC 663 and the statements of the parties have been recorded in compliance of order dated 16.03.2023.

7. Learned counsel for the complainant-respondent No.2 admits the factum of compromise and states that as per the settlement, the complainant has received the agreed amount. Thus, he on instructions submits that there is no objection, if the prayer made by the petitioner is accepted.

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

9. It would be gainful to refer to the judgment of Hon'ble The Supreme Court in **B.V. Seshiaiah 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 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. 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.”

10. 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 (Crl.) No.6974 of 2008 @ CRL.M.P. No.14586 of 2008 in terms of this Order.”

11. 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."

12. Reiterating the aforesaid, Hon'ble The Supreme Court in the case of **Damodar S.Prabhu** (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."

13. In the present case, in pursuance to the direction passed by this Court, the parties had got their statement recorded regarding the genuineness of the compromise arrived at between them, a report from the trial Court has been received in this regard, wherein it has been mentioned that the compromise entered between the parties has been duly acted upon, therefore the it is showing to be voluntary, without any coercion and undue influence and the petitioner has already deposited the compounding fee of 15% of the cheque amount in terms of the order passed by this Court vide order dated 12.02.2020.

14. In view of the above, the present petition is allowed. The judgment dated 06.06.2011 passed by the Appellate Court is set aside by permitting compounding of the offence. Consequently, judgment of conviction and order of sentence dated 03.06.2009 passed by Judicial Magistrate Ist Class, Chandigarh in

Criminal Complaint No.1233 of 2006, is also set aside. The petitioner is ordered to be acquitted of the charges framed against him under Section 138 of the Negotiable Instruments Act, 1881. He be set at liberty forthwith, if not required in any other case.

(AMAN CHAUDHARY)
JUDGE

August 31, 2023
Anjal

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No