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

CRM-43728-2022 in/and
CRR-2472-2022 **(O&M)**
Date of Decision: 23.03.2023

Naresh Kumar

... Petitioner

Vs.

Sarva Haryana Grameen Bank and another

... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

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

Mr. Tarun Dhingra, Advocate
for respondent No.1.

Mr. Karan Garg, AAG, Haryana
for respondent No. 2.

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DEEPAK MANCHANDA, J.(Oral)

Petitioner has filed the instant revision petition assailing judgment dated 05.08.2022 passed by the Additional Sessions Judge, Panipat whereby the appeal of the petitioner has been dismissed wherein the judgment of conviction dated 27.11.2018 and order of sentence dated 28.11.2018 passed by the Judicial Magistrate 1st Class, Panipat were challenged. It is further submitted that vide order of sentence dated 28.11.2018, the petitioner was sentenced to undergo simple imprisonment for a period of six months under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and to pay a fine of Rs. 71,585.25/- which includes interest @ 6% p.a. on the cheque amount w.e.f. 07.12.2015, the date of issuance of cheque and Rs.2000/- litigation expenses incurred by the complainant in conducting the proceedings and Rs.3000/- court fine. In addition to it, he shall undergo simple imprisonment for a period of six months. Out of total amount Rs.68,585.25/- shall be paid to the complainant as compensation under Section 357 Cr.P.C. and Rs.3000/- shall be deposited as fine with the court. In case of non payment of the court fine, he shall further undergo simple imprisonment for a period of 10 days which shall be in addition to the substantive sentence.

Briefly stated, the facts of the revision petition are that the petitioner availed a loan of Rs. 56,500/- from respondent No.1 for depositing the earnest money for allotment of BPL Flat but later on he became defaulter and did not pay the loan amount and on request finally to discharge the liability, the petitioner issued a cheque bearing No. 523045 dated 07.12.2015 for an amount of Rs. 56,500/- drawn on Dena Bank, Panipat which was dishonored by his banker with remarks “Fund insufficient” vide memo dated 17.12.2015. The accused was approached to make payment but he failed to do the same. Thereafter, the complainant-respondent No. 1 sent a legal notice dated 28.12.2015 to the petitioner calling upon him to make the payment and since no payment was made by the petitioner, respondent No. 1 filed the complaint under Section 138 of the Act was instituted, in which petitioner stands convicted and appeal against conviction has been dismissed.

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 notice of accusation issued to him as the whole cheque amount along with interest up to date has been paid to the respondent-Bank, pursuant to which the respondent-Bank has issued a No Dues Certificate on 13.02.2023, a copy of which has been supplied in the Court today and the same is taken on record.

To support his contentions, learned counsel for the petitioner also relies upon the judgment of the Apex Court in the case of ***M/s Meters and Instruments Private Limited and Another vs. Kanchan Mehta, Criminal Appeal No. 1731 of 2017 (arising out of SLP (Crl.) No. 5451 of 2017) decided on 05.10.2017,*** of the Himachal Pradesh High Court in ***Laxman Dass vs. Balmukund Gautam and another, 2018 (4) RCR (Crl.) 72*** and the judgment of the Co-ordinate Bench of this Court in the case of ***Tilak Kataria vs. State of Haryana and another, 2021(3), RCR (Criminal) 404***.

Learned counsel appearing on behalf of the respondent-Bank raised no objection to the arguments raised by learned counsel for the petitioner and submits that the entire cheque amount along with the interest has been paid by the petitioner and nothing is pending against him.

I have heard learned counsel for the parties and perused the record.

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 **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**.

Undoubtedly, the petitioner has paid all the dues to the respondent Bank and a receipt thereof along with the No Dues Certificate dated 13.02.2023 has been supplied by the learned counsel for the petitioner in the Court today and further a certificate on behalf of respondent-Bank has also been supplied in the Court wherein it is clearly mentioned that cheque amount along with up to date interest has already been paid by the petitioner and the Bank does not wish to pursue the complaint under Section 138 of Negotiable Instruments Act further.

Moreover, the dispute herein is private in nature and offence committed by the petitioner is only against the complainant and not a crime against society at large.

In view of the principles laid down in conspectus of aforesaid judicial precedents and 'No Dues Certificate' issued by the respondent

No. 1-Bank showing that the petitioner has paid all the cheque amount along with the up to date interest, the present revision petition is allowed. Accordingly, the impugned judgment of conviction dated 27.11.2018 and order of sentence dated 28.11.2018 passed by the Judicial Magistrate, 1st Class, Panipat and the judgment dated 05.08.2022 passed by the Additional Sessions Judge, Panipat are set aside. Further, the complaint under Section 138 of the Act stands dismissed and the petitioner is acquitted of notice of accusation in view of the fact that the petitioner has already paid the entire cheque amount to the respondent No.1-complainant as per 'No Dues Certificate' dated 13.02.2023 issued by the said Bank.

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

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

(DEEPAK MANCHANDA)
JUDGE

23.03.2023
Seema

Whether speaking/reasoned	***Yes***
Whether Reportable	***Yes /No***