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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2355-2023(O&M)
Date of Decision:07.11.2023

Varun Katyal

...Petitioner

Vs.

Shubham Impex through its Proprietor Naveen Malhotra

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. G.S Jagpal, Advocate
for the applicant-petitioner.

Mr. G.S Bains, Advocate
for the respondent.

N.S.Shekhawat J.

1. Feeling aggrieved and dissatisfied with the impugned judgment dated 12.09.2023, passed by the Court of Sessions Judge, Ludhiana and the impugned judgment and order of sentence dated 24.08.2021 passed by the Court of Judicial Magistrate First Class, Ludhiana, whereby the petitioner was ordered to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act") was sentenced to undergo SI for a period of one year and to pay compensation equivalent to the cheque amount, the petitioner has preferred the present revision petition before this Court.

2. As per the case set-up by the respondent/complainant, the petitioner was having friendly relations with the respondent and in the Month of April/May 2014, the petitioner requested the respondent for a loan of Rs.10 lacs

for some business purpose. The respondent advanced a loan amount of Rs.10 lacs to the petitioner and the petitioner had assured to return the same within a period of 2 months. However, the petitioner failed to honour the commitment, however, on persistent demand of respondent, the petitioner issued a cheque of an amount of Rs.10,00,000/- bearing No.718275 dated 20.10.2014, drawn on Oriental Bank of Commerce, Tagore Nagar, Ludhiana in favour of the respondent with an assurance that the same would be honoured on presentation. However, on presentation, in the Axix Bank, Hambran Road, Ludhiana, the cheque was returned back dishonoured vide the memo dated 07.01.2015 with the remarks "Funds Insufficient". The respondent got a legal notice issued upon the petitioner under Section 138 of the "Act" through registered post, asking the petitioner to return the amount within a period of 15 days of receipt of the legal notice. However, the petitioner did not make any payments to the respondent. Ultimately, the complaint under Section 138 of the "Act" was filed by the respondent against the petitioner.

3. Vide the impugned judgment and order of sentence dated 24.08.2021 passed by the Court of Judicial Magistrate First Class, Ludhiana, the petitioner was ordered to be convicted for the offence punishable under Section 138 of the "Act" and was sentenced to undergo SI for a period of one year and to pay compensation equivalent to the cheque amount. Even the appeal preferred by the petitioner was ordered to be dismissed by the Court of Sessions Judge, Ludhiana vide the impugned judgment dated 12.09.2023.

4. During the pendency of the present revision petition, the petitioner has moved an application under Section 147 of the Act read with Section 482 Cr.P.C with a prayer to compound the offences in view of the compromise

between the parties. It was averred in the application that the matter has been amicably resolved between the parties and the compromise deed dated 16.10.2023 reduced into writing. The respondent also filed a reply to the said application and admitted the factum of compromise. It was stated that the respondent had no grouse against the present petitioner and the offence may be ordered to be compounded between the parties.

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

6. Learned counsel for the petitioner by relying upon **Cochin Hotels Co.(P) Ltd. and others Vs. Kairali Granites and others, 2006(2) RCR (Criminal) 333** and **K. Subramanian Vs. R. Rajathi represented by POAP Kaliappan, 2010 (1) RCR (Criminal) 184** contended that even after finalization of judgment of conviction and order of sentence, petitioner can resort to compounding mechanism in terms of Section 147 of Negotiable Instruments Act as the offence related to dishonouring of cheque is having compensatory profile and it should be given precedence over punitive mechanism. Offence is almost a civil wrong which has been clothed in a criminal overtone, therefore, the priority should be given to compensatory mechanism.

7. Learned counsel also relied upon **Damodar S. Prabhu vs. Sayed Babalal H.(supra) Kaushalya Devi Massand vs. Roopkishore, 2011(2) RCR (Criminal) 298** and contended that the compromise in question would definitely go in long way to strengthen the mutual relationship between the parties and would serve as an ever lasting tool in their favour. This exercise would be in consonance with the spirit of Section 147 of the Negotiable

Instruments Act as endorsed in **Damodar S. Prabhu's case (supra)**.

8. For the reasons recorded hereinabove, I deem it appropriate to dispose of the present revision petition in terms of compromise consequently the impugned orders are set aside.

9. So far as 15% of the cheque amount in terms of ratio of **Damodar S. Prabhu's case (supra)** is concerned, I am of the view that Section 147 of the Negotiable Instruments Act does not contain any guideline or procedure for proceeding with the compounding of the offences. Since scheme under Section 320 Cr.P.C cannot be followed in stricto sensu, therefore, Hon'ble Apex Court has also clarified that in order to discourage chronic litigants from delaying the composition of the offence under Section 138 of the Act, the scheme for imposing costs is considered to be a valid means to encourage compounding at the earliest. Valuable time of the Court is also involved in the trial of the cases and the parties are not liable to pay any Court fee in such proceedings, even though the impact of the offence is largely confined to the private parties. The imposition of costs would be a matter of discretion of the Court.

10. In view of the fact that the parties have resolved their differences and have compromised the matter and also the fact that the petitioner is facing extreme financial hardships, I am of the view that 15% of the cheque amount towards cost(s) of litigation can be waived off in the interest of justice and taking a lenient in the matter, the petitioner is directed to deposit a sum of Rs.40,000/- as costs, which shall be deposited with the **Punjab and Haryana High Court Bar Clerks Association**.

11. In view of the above discussion, the impugned judgments/order(s) are set aside and the parties are allowed to compound the offence in terms of

Section 147 of the Act and petitioner is ordered to be acquitted of the charge.

12. All pending applications, if any, are disposed off, accordingly.

07.11.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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