

CRM-47765-2022 and
CRR-2734-2022 (O&M)

-1-

269

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-47765-2022 and
CRR-2734-2022 (O&M)
Date of Decision: 30.05.2023

Balwinder Singh

..... Petitioner

Versus

Gurdial Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Jagjot Singh Lalli, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

1. Petitioner (Balwinder Singh) has filed the present petition seeking setting aside of impugned judgment of conviction and order of sentence dated 10.07.2007 passed by the Court of Judicial Magistrate Ist Class, Jalandhar, whereby the petitioner was convicted and sentenced under Section 138 of the Negotiable Instruments Act. Further prayer has been made to set aside impugned judgment dated 02.06.2008 passed by the Court of Sessions Judge, Jalandhar, whereby the appeal filed by the petitioner against the aforesaid judgment of conviction and order of sentence dated

CRM-47765-2022 and
CRR-2734-2022 (O&M)

-2-

10.07.2007 passed by Judicial Magistrate Ist Class, Jalandhar, was dismissed.

2. Learned counsel for the petitioner submits that the petitioner was convicted under Section 138 of the Negotiable Instruments Act vide judgment dated 10.07.2007 passed by the Court of Judicial Magistrate Ist Class, Jalandhar and vide a separate order of even date, the petitioner was sentenced as under:

Offence u/s	Imprisonment
138 of the Negotiable Instruments Act	To undergo rigorous imprisonment for a period of one year along with fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period for one month.

3. Being aggrieved by the aforesaid judgment of conviction and order of sentence dated 10.07.2007, the petitioner filed an appeal before the Court of Sessions Judge, Jalandhar, however, the same was dismissed vide judgment dated 02.06.2008. Accordingly, the petitioner filed the instant revision petition before this Court along with an application for condonation of delay. The delay in filing the instant revision petition was condoned vide order dated 08.05.2023.

4. In the grounds of revision petition, the petitioner has taken a categorical stand that after passing of the judgment dated 02.06.2008 by the Court of Sessions Judge, Jalandhar, the matter was amicably settled between the parties and the money outstanding was paid to the respondent.

5. Respondent herein has filed a reply dated 06.05.2023 admitting the factum of compromise and also admitted that the petitioner has returned

**CRM-47765-2022 and
CRR-2734-2022 (O&M)**

-3-

the cheque amount to him.

6. In view of the aforementioned circumstances, once the parties have settled their dispute then in terms of the judgment passed by the Hon'ble Supreme Court in “**Vinay Devanna Nayak Vs. Ryot Seva Sahakari Bank Ltd.**”, 2008(1) R.C.R. (Criminal) 249, the offence committed by the petitioner for which he has been convicted, is compoundable. Relevant paragraphs therefrom are extracted below:-

“17. As observed by this Court in Electronic Trade & Technology Development Corporation Ltd. v. Indian Technologists & Engineers, 1996(1) RCR (Criminal) 592 : (1996)2 SCC 739, the object of bringing Section 138 in the statute book is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realised this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. (Act 55 of 2002). The said section reads thus:

S.147. Offences to be compoundable. -

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every

**CRM-47765-2022 and
CRR-2734-2022 (O&M)**

-4-

offence punishable under this Act shall be compoundable.

18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.

19. For the foregoing reasons the appeal deserved to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him.”

7. Accordingly, the application (CRM-47765-2022) filed by the petitioner seeking compounding of offence is allowed and the judgment of conviction and order of sentence dated 10.07.2007 passed by the Court of Judicial Magistrate Ist Class, Jalandhar, against the petitioner and also the judgment dated 02.06.2008 passed by learned Sessions Judge, Jalandhar are set aside and the petitioner is acquitted from all the charges levelled against him in the present case.

8. Learned counsel for the petitioner has handed over a photocopy of the receipt, whereby an amount of Rs.8,300/- has been deposited by the petitioner with the Punjab State Legal Services Authority in terms of the

CRM-47765-2022 and
CRR-2734-2022 (O&M)

-5-

judgment rendered in the case of “*Damodar S. Prabhu Vs. Sayed Babalal H.*”, 2010 (5) SCC 663, which is taken on record, subject to all just exceptions.

- 9. Present petition is disposed of in the aforesaid terms.
- 10. All pending application(s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

30.05.2023
Himani

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No