

CRR-3075-2019 (O&M)

2023:PHHC:074591
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107+236 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-3075-2019 (O&M)
DATE OF DECISION:-17.05.2023

Sukhdev Singh

...Petitioner.

Vs.

Happy Jewellers and others

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. KDS Sodhi, Advocate
for the petitioner.

Mr. Jagtar Kureel, Advocate,
for respondent No.1.

Mr. Amit Shukla, AAG, Punjab,
for respondent No.3-State.

HARKESH MANUJA, J.

CRM-19932-2023

Prayer in this application is for cancellation of bailable warrants of the applicant-petitioner issued vide order dated 15.03.2023.

Since, the applicant-petitioner has already appeared before the trial court and furnished his bail bonds/surety, which already stand accepted, the present application is disposed of as having been rendered infructuous.

Main case

1. Challenge in the present revision petition is to the judgment dated 05.09.2019 passed by the court of learned Additional Sessions Judge, Patiala, whereby the appeal filed against the judgment of conviction and

order of sentence dated 13.06.2017 passed by learned Judicial Magistrate Ist Class, Patiala, was dismissed, upholding the same.

2. The facts of the case are that on account of dishonour of cheque bearing No.372553 dated 29.07.2015 amounting to Rs.69,000/-, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to "NI Act") came to be filed at the instance of respondents No.1 and 2-complainant against the petitioner, resulting into conviction besides awarding sentence of rigorous imprisonment for a period of 6 months and to pay compensation equivalent to the cheque amount, vide judgment/order dated 13.06.2017.

3. Aggrieved thereof, the petitioner filed first appeal before the court of learned Additional Sessions Judge, Patiala, which was dismissed vide judgment dated 05.09.2019, thereby, upholding the judgment passed by the trial court with modification that the compensation awarded to the complainant shall carry interest @ 7.5% from the date of cheque till the realization, failing which, to undergo simple imprisonment for six months more.

4. Learned counsel for the petitioner submits that during pendency of present revision petition, better sense has prevailed and the parties have entered into a compromise as the petitioner has discharged his liability towards respondent No.1-complainant.

5. In compliance of last order dated 03.05.2023, learned counsel for the petitioner has produced a demand draft bearing No.426251 dated 15.05.2023 amounting to Rs.1,00,000/- in the name of respondent No.1 and

the same has been handed over to learned counsel representing the complainant-respondent No.1 as full and final settlement. Learned counsel has also produced order dated 15.05.2023 passed by the Court of Judicial Magistrate Ist, Class, Patiala, whereby the petitioner appeared and furnished his bail bonds/surety bonds, which already stands accepted.

6. In view thereof, learned counsel for respondent No.1-complainant submits that the liability against the cheque in question now stands discharged and nothing remains due towards the petitioner.

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

8. 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 having made the entire payment, offence under Section 138 of 1881 Act, thus, stands compounded. Moreover, the petitioner has already appeared before the trial court and furnished his bail bonds/surety bonds, which have already been accepted.

9. 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."*

10. In view of the discussion made hereinabove and to give a complete quietus to the litigation, the present revision petition is accepted. 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.

17.05.2023

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(HARKESH MANUJA)
JUDGE

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