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

CRR-2743-2022 (O&M)

Date of Decision: 14.02.2023

AMIT KUMAR

....Petitioner

Versus

STATE OF HARYANA AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. P.K. Ganga, Advocate
for the petitioner.

Mr. Ram K Singla, DAG, Haryana
for respondent No.1/State.

Mr. Satyam Khichi, Advocate for
Ms. Gurdeep Kaur, Advocate
for the respondent No.2.

HARSH BUNGER, J. (Oral)

Petitioner-Amit Kumar, has filed the present revision petition, challenging the judgment of conviction and order of sentence dated 02.02.2017 passed by the learned Judicial Magistrate Ist Class, Ellenabad, upon a complaint moved by Rakesh Kumar-respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act, 1881') in respect of Cheque No.474340, dated 19.10.2012, drawn on State Bank of India, Ellenabad. Petitioner has also challenged judgment dated 23.11.2022, passed by Sessions Judge, Sirsa, whereby an appeal filed by the petitioner against aforesaid judgment dated 02.02.2017 was dismissed.

Vide judgment of conviction and order of sentence dated 02.02.2017 passed by the learned Judicial Magistrate Ist Class, Ellenabad, the petitioner was sentenced to undergo rigorous imprisonment for a period of six months for offence under Section 138 of the N.I. Act, 1881 and to pay compensation of Rs.2,50,000/- under Section 357(3) of Cr.P.C. to the

complainant.

The aforesaid judgment of conviction and order of sentence dated 02.02.2017 passed by the learned Judicial Magistrate Ist Class, Ellenabad, has been upheld by the learned Sessions Judge, Sirsa, vide judgment dated 23.11.2022.

Learned counsel for the petitioner submits that during the pendency of this revision, the matter has been amicably settled between the parties and the cheque amount of Rs.2,50,000/- has been paid by the family members of the petitioner to respondent No.2, in respect of which, affidavit dated 14.12.2022 of respondent No.2-Rakesh Kumar, has been annexed as Annexure A-1. The petitioner has also filed an application bearing CRM-49466-2022 in CRR-2743-2022, seeking compounding of the offence under Section 138 of the N.I. Act, 1881. Accordingly, learned counsel for the petitioner has prayed that the offence under Section 138 of the N.I. Act, 1881, may be compounded and conviction of the petitioner may be set aside.

The factum of compromise arrived at between the petitioner and respondent No.2 and receipt of cheque amount of Rs.2,50,000/- by respondent No.2 has not been disputed by learned counsel appearing for respondent No.2, rather, he endorsed his no objection, in case, the conviction of the petitioner is set aside.

I have heard learned counsel for the parties and have perused the paper book with their able assistance.

Once the parties have settled their dispute, then in terms of the judgment of Hon'ble the Supreme Court in *Vinay Devanna Nayak v. Ryot Seva Sahakari Bank Ltd., 2008(1) RCR (Criminal) 249*, the offence committed by the petitioner for which he has been convicted, is compoundable. Relevant paras therefrom are extracted below :-

*“17. As observed by this Court in **Electronic Trade & Technology Development Corporation Ltd. v. Indian Technologies & 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 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 deserves 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.”

It is noted that vide order dated 01.02.2023 passed by this Court, learned counsel for the petitioner was directed to bring 15% of the cheque amount in question in terms of the decision of Hon’ble Supreme Court in ***Damodar S. Prabhu vs Sayed Babalal H. 2010(5) SCC 663.*** Pursuant thereto, learned counsel for the petitioner has produced a receipt dated 14.02.2023 of State Bank of India amounting to Rs.37,500/-, deposited in Haryana State Legal Services Authority, which is taken on record and marked as ‘Mark A’.

In view of aforementioned facts and circumstances, especially the factum of settlement of dispute between the parties, the offence is compoundable, accordingly, the application for compounding is allowed and it is directed that the judgment of conviction and order of sentence dated 02.02.2017, which was upheld vide judgment dated 23.11.2022 passed by learned Sessions Judge, Sirsa are set aside and the petitioner is acquitted from all the charges leveled against him.

The petition is disposed of accordingly.

Pending application/s, if any, shall stands disposed of.

14.02.2023
Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No