

2023:PHHC:103704

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

**CRM-27475-2023 and
CRM-27476-2023 in/and
CRR-2800-2022**

**Reserved on : 28.07.2023
Pronounced on : 09.08.2023**

Balwinder Singh

.....Applicant/Petitioner

Versus

Satpal Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by : Mr. Sahil Khunger, Advocate
for the applicant/petitioner.

Mr. Raghav Puggal, Advocate
for respondent No.1.

Mr. Anurag Bansal, A.A.G., Punjab
for respondent No.2-State.

NAMIT KUMAR, J.

CRM-27476-2023

Prayer in the instant application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.) is for recalling the order dated 02.06.2023 whereby the main revision petition bearing No.CRR-2800-2022 has been dismissed with cost of Rs.20,000/- to be deposited by the petitioner with the Punjab and Haryana High Court Lawyers Welfare Fund, Chandigarh.

Learned counsel for the applicant/petitioner submits that after passing of the order dated 02.06.2023, a compromise dated

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09.06.2023 (Annexure P-2) has been effected between the parties and the petitioner has settled the dispute with respondent No.1/complainant for a sum of Rs.9,00,000/-. The petitioner has also deposited the cost of Rs.20,000/- imposed by this Court with the Punjab and Haryana High Court Lawyers Welfare Fund, Chandigarh. As per the compromise, respondent No.1/complainant has agreed to compound the matter. Therefore, the present application may be allowed and order dated 02.06.2023 may be recalled.

Learned counsel for respondent No.1/complainant has admitted the factum of compromise and submits that he has no objection, if the present application is allowed and order dated 02.06.2023 is recalled.

In view of the submissions made by learned counsel for the applicant/petitioner and no objection by learned counsel for respondent No.1/complainant, the present application is allowed, order dated 02.06.2023 is recalled and main revision petition is restored to its original number.

CRR-2800-2022 (O&M)

1. The petitioner has filed the present revision petition challenging the judgment dated 05.09.2022 passed by learned Additional Sessions Judge, Ferozepur, whereby appeal filed by the petitioner against the judgment of conviction and order of sentence dated 12.11.2018 passed by learned Judicial Magistrate First Class, Ferozepur holding him guilty under Section 138 of the Negotiable

Instruments Act, 1881 (for short 'the N.I. Act') and sentencing him to

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undergo simple imprisonment for a period of 01 year and 05 months and to pay compensation of Rs.15,00,000/- and in default of payment of compensation to further undergo simple imprisonment for a period of two months, has been dismissed.

2. Briefly stated, respondent No.1/complainant Satpal Singh has filed a complaint under Section 138 of the N.I. Act against the petitioner on the allegations that the petitioner and respondent No.1/complainant were known to each other and in faithful dealing, the petitioner borrowed a sum of Rs.11,25,000/- from the complainant for domestic purpose with promise to repay the same within a short time. In order to discharge his legal liability towards respondent No.1/complainant, petitioner issued a cheque bearing No.736441 dated 30.05.2015 for an amount of Rs.11,25,000/- drawn on OBC Bank, Bagdadi Gate, Ferozepur City in favour of respondent No.1/complainant and the said cheque was duly signed by the petitioner. As per the instructions and assurance of the petitioner, respondent No.1/complainant presented the abovesaid cheque in the bank for encashment but the same was returned unpaid with the cheque return memo dated 01.06.2015 with the remarks "Insufficient Funds". Thereafter, respondent No.1/complainant issued a legal notice dated 15.06.2015 to the petitioner on which the petitioner again requested the complainant to again present the said cheque for encashment on 17.08.2015 and on 17.08.2015 the complainant again presented the said cheque for encashment but the same was again dishonoured for the reasons "Insufficient Funds". Thereafter, a legal notice dated

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01.09.2015 was served upon the petitioner by respondent No.1/complainant through his counsel which could not bring any fruitful result. Hence, complaint under Section 138 of the N.I. Act was instituted.

3. After hearing both the parties and perusing the evidence on record, learned Judicial Magistrate First Class, Ferozepur, vide judgment of conviction and order of sentence dated 12.11.2018 convicted the petitioner under Section 138 of the N.I. Act and sentenced him to undergo rigorous imprisonment for a period of 01 year and 05 months and to pay compensation of Rs.15,00,000/- to respondent No.1/complainant.

4. The aforesaid judgment and order dated 12.11.2018 were challenged by the petitioner by way of appeal filed before learned Additional Sessions Judge, Ferozepur, who, vide judgment dated 05.09.2022, dismissed the same finding it without any merit.

5. Feeling aggrieved, petitioner has filed the instant revision petition with a prayer that both the aforesaid judgements passed by the Courts below be set aside and the petitioner may be acquitted of the charges levelled against him which was dismissed vide order dated 02.06.2023 passed by this Court. The order dated 02.06.2023 reads as under :-

“Challenge in the present revision petition is to the judgment dated 05.09.2022 passed by the Court of learned Additional Sessions Judge, Ferozepur, whereby appeal filed by the petitioner against the judgment of conviction and order of sentence dated 12.11.2018 holding him guilty and sentencing to undergo simple imprisonment for one

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year and five months and to pay compensation of Rs.15,00,000/- under Section 138 of the Negotiable Instruments Act and in default of payment of compensation to further undergo simple imprisonment for two months, has been dismissed.

Notice of motion in the present case was issued on 15.12.2022.

Thereafter on 17.04.2023 petitioner's wife had given undertaking that the petitioner shall pay a sum of Rs.2,00,000/- to the complainant/respondent No.1 within a period of two weeks in the shape of demand draft as a part payment of the cheque amount and the case was adjourned for 27.07.2023 and sentence of the petitioner was suspended for a period of 3 months.

Thereafter, application bearing CRM-20680-2023 was filed on behalf of the petitioner seeking extension of time for remitting payment of Rs.2,00,000/- and on 17.05.2023 notice was issued in the said application to respondent No.1 for 30.05.2023, which is reproduced as under:-

"Application has been filed under Section 482 Cr.PC seeking extension of time for remitting the payment of Rs.2,00,000/- to the complainant-respondent No.1.

Learned counsel for the applicant-petitioner submits that as on date the petitioner has been able to arrange a sum of Rs.1,00,000/- and he may be granted 10 days more time for making payment of the total amount of Rs.2,00,000/- to the complainant-respondent No.1 and he shall bring demand draft and hand over the same to the complainant-respondent No.1 in the Court itself on the next date of hearing.

Notice in the application. Mr. Adhiraj Singh, AAG, Punjab accepts notice on behalf of respondent-State.

Notice be issued to respondent No.1-complainant, returnable on 30.05.2023."

On 30.05.2023 counsel for the petitioner pleaded no instructions from the petitioner.

Counsel for respondent No.1 points out that Rs.2,00,000/- has not been paid by the petitioner to

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respondent No.1, thereafter, the case was adjourned for today and petitioner was directed to appear in person. Despite that, petitioner is not present in spite of two pass-over.

In view of the above fact, the present petition is dismissed with a costs of Rs.20,000/- to be deposited with the Punjab & Haryana High Court Lawyers Welfare Fund, Chandigarh within a period of one month from today as the petitioner has failed to comply with undertaking recorded in the order dated 17.04.2023. The police authorities are directed to arrest the petitioner as per law.”

6. Now, the petitioner has again approached this Court for recalling the order dated 02.06.2023 and for compounding the offence on the grounds that the matter has been compromised between the parties vide compromise dated 09.06.2023 (Annexure P-2) for an amount of Rs.9,00,000/- out of which the petitioner has already paid amount of Rs.5,00,000/- to respondent No.1/complainant and the rest of the amount i.e. Rs.4,00,000/- will be paid to respondent No.1/complainant on 10.08.2023. Learned counsel for the petitioner relies upon the judgment passed by this Court in ***CRR No.360 of 2021 titled as ‘Ashok Kumar Vs. Surinder Kumar’ decided on 20.02.2023***, wherein, after considering the 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.

7. The Hon’ble Supreme Court in ***Ramgopal and another Vs. State of Madhya Pradesh : 2021(4) RCR (Criminal) 322***, has held that in non-compoundable cases of pre-dominantly private nature, even if compromise is reached after conviction, the proceedings can be quashed under Section 482 Cr.P.C. Further, the compromise in the present case

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is found to be fully covered in consonance of judgments and directions issued by the Court in ***Kulwinder Singh and others Vs. State of Punjab : 2007(3) RCR (Criminal) 1052*** and ***Gian Singh Vs. State of Punjab and another : 2012(4) RCR (Crl.) 543***.

8. The Hon'ble Supreme Court in ***A.T. Sivaperumal Vs. Mohammed Hyath (D) by LR's, 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***.

9. Learned counsel for the petitioner and learned counsel for respondent No.1/complainant, are ad idem and submit that as the matter stands compromised, CRM-27475 of 2023 filed by the petitioner under Section 320(8) of the Cr.P.C. for compounding the offence under Section 138 of the N.I. Act may be allowed and permission may be granted to the parties to compound the offence in view of the law laid down by the Hon'ble Supreme Court in ***Damodar S. Prabhu Vs. Sayed Babalal H : 2010 (2) RCR (Criminal) 851***; the impugned judgments and order passed by the learned trial Court and the learned Appellate Court may be set aside and the petitioner be acquitted of the charge.

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

11. In the present case, the cheque amount is Rs.11,25,000/-. In view of the law laid down in ***Damodar S. Prabhu's case (supra)***,

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compounding of the present offence can be allowed provided the petitioner/accused pays 15% of the cheque amount by way of costs. On calculation, 15% of the cheque amount comes to Rs.1,68,750/-. As noticed above, the parties have settled the dispute by way of compromise. Thus, this Court grants permission to compound the offence punishable under Section 138 NI Act.

12. In view of the above, the impugned judgment of conviction and order of sentence dated 12.11.2018 passed by the learned Judicial Magistrate, First Class, Ferozepur, and the judgment dated 05.09.2022 passed by the learned Additional Sessions Judge, Ferozepur, are set aside; the complaint under Section 138 of the N.I. Act stands dismissed and the petitioner stands acquitted of the charge, subject to his depositing the costs of Rs.1,68,750/- with the Punjab State Legal Services Authority, concerned in view of the law laid down by the Hon'ble Supreme Court in *Damodar S. Prabhu's case (supra)*, within one month from the receipt of the certified copy of this order. The present petition is allowed in the aforementioned terms.

13. Needless to say that the parties shall remain bound by the terms and conditions of the compromise.

14. Pending application(s), if any, stand disposed of in view of the abovesaid judgment.

09.08.2023
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes