

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-3177-2019 (O&M)

Date of decision: 07.07.2023

Santosh Kumari

....Petitioner

Versus

Usha Rani and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr.Angrej Kumar, Advocate for the petitioner

Mr.Vishnu Dutt, Advocate for

Mr.Naveen Bawa, Advocate for the respondents

AMAN CHAUDHARY. J.

1. Challenge in the present revision is to the judgment dated 08.11.2019 passed by learned Additional Sessions Judge, Ludhiana, dismissing the appeal filed against the judgment and order dated 14.02.2017, rendered by the learned Judicial Magistrate, 1st Class, Ludhiana whereby the petitioner was convicted and sentenced to undergo rigorous imprisonment for one year for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

2. The facts relevant as narrated in the complaint filed under Section 138 of the Act by the complainant-respondent are that the accused-petitioner had taken a friendly loan from the complainant and in order to discharge her liability, she had issued a cheque bearing No.115480 dated 17.09.2013, for a sum of Rs.2,70,000/- in her name. When the said cheque was presented for encashment by the complainant in her bank, it was dishonoured by the banker of the accused vide memo dated 18.09.2013 with the remarks "opening balance insufficient". The complainant sent a legal notice dated 08.10.2013 to the accused-petitioner but he failed to make the payment. The proceedings against her were initiated under Section 138 of the Act, pursuant to which, the accused appeared on 22.11.2013 and was released on bail. On finding prima facie case under Section 138 of the

Negotiable Instrument Act 1881, notice of accusation was served upon the accused-petitioner, to which she pleaded not guilty and claimed trial.

3. In order to prove her case, complainant herself entered into the witness box as CW1 and tendered her duly sworn affidavit, Ex.CA in evidence and other documentary evidence. She also examined Ajit Kumar as CW2, who proved the DDR regarding missing cheque. On closure of her evidence, statement of accused-petitioner under Section 313 of Cr.P.C was recorded, she denied all the allegations raised against her and pleaded innocence by stating that she had returned the alleged amount. In defence, she examined DW1 Kulwant Singh and DW2 Sukhbir Singh.

4. After scrutinizing the evidence led by the parties, the trial Court came to the conclusion that the complainant has successfully proved her case against the petitioner-accused, and convicted and sentenced the accused-petitioner, as mentioned in para no.1 above. Aggrieved convict-petitioner filed appeal, which was dismissed by the learned Additional Sessions Judge, Ludhiana vide impugned judgment dated 08.11.2019.

5. Hence, the present revision petitions.

6. Learned counsel for the petitioner states that in pursuance of order dated 10.03.2019, both the parties had appeared before the Mediator at Ludhiana for settling the matter, where with the assistance of the Mediator, they have arrived at an amicable settlement and resolved the dispute. In this regard a written agreement of settlement dated 19.04.2019 has been executed, copy of which is produced and taken on record as Mark 'A'. Learned counsel prays that the compounding fee be waived off, as the petitioner is a poor widow lady, suffering from heart ailment, having four children including three daughters, one of whom is

also a widow and residing with the petitioner and one is unmarried. They all are residing in a rented accommodation. The petitioner has with great difficulty managed to collect the money and settled the dispute as she wanted to put an end to the same, ten years having gone by.

7. Learned counsel for respondent No.1 also admits the factum of compromise and states that as per the settlement, the complainant has received the agreed amount. Therefore, he has no objection, if the prayer made by the petitioner is accepted.

8. Heard the learned counsel for the parties.

9. This Court on the request made by learned counsel for the parties, vide order dated 10.03.2023, had referred the matter to the Mediation Centre, Ludhiana wherein, the matter has been settled between the parties and the complainant has received the settled amount and submitted that she has no objection, if the offence is ordered to be compounded.

10. It is apposite to refer to the judgment of Hon'ble The Supreme Court in **B.V.Seshaiah vs. The State of Telangana and another** 2023 Live Law (SC) 75, wherein it was held thus:

“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. Dishonor 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.”

11. Hon'ble The Supreme Court in the case of **K.Subramanian vs.**

R.Rajathi (2010) 15 SCC 352, has held as under:-

“6. Having regard to the salutary provisions of Section 147 of Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.

7. xx xx xx

8. The CRL.M.P. No.12804 of 2009 in which the prayer is made by petitioner to permit him to produce affidavits sworn by him on December 1, 2008 as well as affidavit sworn by P. Kaliappan power of attorney holder of R. Rajathi on December 1, 2008, as additional documents is allowed. CRL. M.P. No.12803 of 2009 in which the petitioner has prayed to permit him to compound the offence and acquit him by setting aside the conviction recorded in Criminal case No. 726/2003 under Section 138 of the Negotiable Instruments Act by Learned Judicial Magistrate, Karur is allowed. The petitioner is permitted to compound the offence. The Order of conviction and sentence recorded by all the Courts are hereby set aside and petitioner is acquitted of the charge leveled against him.”

12. The compounding of the offence at later stages of litigation in cases under Section 138 of NI Act has also been held to be permissible by Hon'ble The Supreme Court in a case of **K.M. Ibrahim vs. K.P. Mohammed & Anr.**, 2009 (14) SCALE 262, wherein it was held as under:-

"11. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences.

12. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution."

13. Reiterating the aforesaid Hon'ble The Supreme Court in the case of **Damodar S.Prabhu vs. Sayed Babalal H.** 2010(5) SCC 663 has held that in case of dishonour of cheque, accused convicted, there is no stage prescribed for compounding of offence under Section 147 of the Act and it was observed that "It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings." It was further observed that, "Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance."

14. In the peculiarity of facts and circumstances of the case and in light of the judgment in **Damodar S.Prabhu (supra)**, the petitioner is permitted to compound the offence. However, this Court is not inclined to accept the prayer for waiving off the compounding fee, but considering the mitigating circumstances of the petitioner brought out by her learned counsel, as noticed above, the same is reduced in view of the afore-referred judgment and she is ordered to deposit an amount of Rs.10,000/- as costs, with the Haryana State Legal Services Authority on or before 30.07.2023. The judgment of conviction/order of sentence recorded

by the trial Court and affirmed by the appellate Court are hereby set aside and petitioner is acquitted of the charges framed against her.

15. The revision petition stands disposed of accordingly.

16. Compliance report be forwarded by the Haryana State Legal Services Authority within a week after deposit of the aforesaid amount.

(AMAN CHAUDHARY)
JUDGE

07.07.2023

gsv

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No