

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

CRM-M-58550-2022

Date of Decision: 07.02.2023

Jasmal Singh

..... Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. ADS Jattana, Advocate, for the petitioner.

Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Ms.Kusum Raj, Advocate, for respondent No.2.

Rajesh Bhardwaj, J.

The petitioner has approached this Court praying for setting aside the order dated 02.07.2022, in CRM No.267 of 2022 pending before the Court of learned JMIC, Faridkot in case titled as Jasmal vs. Gurwinder Singh alongwith all subsequent orders and proceedings against the petitioner, as the petitioner has compromised the matter with respondent No.2 and has paid Rs.90,000/- to the complainant-respondent.

The brief facts of the case are that the petitioner borrowed an amount of Rs.90,000/- from the complainant in November 2016 with the assurance that he would return the amount as and when demanded by the complainant. When the complainant demanded said amount, the petitioner issued a cheque No.036466 dated 06.02.2017 for Rs.90,000/- drawn on Punjab National Bank, Faridkot. On being presentation, the cheque was dishonoured with the remarks “funds insufficient” vide memo dated 07.02.2017. Then the complainant through his counsel sent a legal notice to the petitioner for making the payment of abovesaid amount within 15 days but the petitioner failed to do so. Then the complaint was filed. After

conclusion of the trial, the petitioner was convicted and sentenced on 02.08.2019 to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/-. The petitioner challenged the order dated 02.08.2019 before the learned Additional Sessions Judge, Faridkot and the same was decided on 12.03.2022 by the National Lok Adalat.

It has been contended by learned counsel for the petitioner that the petitioner was prosecuted in the complaint under Section 138 of the Negotiable Instruments Act and he was convicted. However, subsequently both the parties settled the dispute amicably before the National Lok Adalat, Faridkot. He submits that by virtue of award dated 12.03.2022 passed by the learned National Lok Adalat, Faridkot, sentence of the petitioner was modified and benefit of probation was given to him. Learned counsel for the petitioner has submitted that as per the award, compromise was to be honoured within 15 days from the date of the passing of the award i.e. 12.03.2022, however, due to unavoidable circumstances in the family of the petitioner, award passed could not be honoured within 15 days as directed. He submits that because of the same, the learned Judicial Magistrate passed the impugned order dated 02.07.2022, wherein, it was observed that the order dated 12.03.2022 passed by the learned Presiding Officer, National Lok Adalat, Faridkot was not honoured and hence, para 6 (e) of the award dated 12.03.2022 comes into operation and the learned Magistrate issued re-arrest warrants against the accused for 25.08.2022. He submits that thereafter, both the parties have amicably resolved all the outstanding issues and the award dated 12.03.2022 was complied with in toto. He submits that the payment as directed has already been paid to the respondent-

complainant and the complainant has also filed an affidavit dated 01.12.2022 endorsing the same. He submits that once all the outstanding issues between both the parties have been amicably resolved and the award dated 12.03.2022 has been duly complied with, the impugned order dated 02.07.2022 deserves to be set aside and the delay in complying with the award of National Lok Adalat dated 12.03.2022 is liable to be condoned.

Learned counsel for the complainant has confirmed the submissions made by learned counsel for the petitioner and has submitted that the matter has been amicably resolved and the outstanding amount has already been paid. She submits that an affidavit to this effect has also been filed by the respondent-complainant, who has no objection, if the present petition is allowed.

Heard.

Admittedly, the matter was amicably resolved before the National Lok Adalat, Faridkot by virtue of award dated 12.03.2022, whereby, impugned sentence of the petitioner was modified and benefit of probation was given to him, operative part of which is reproduced as under:-

“6. No previous conviction of the appellant is either alleged or proved from the record. Keeping in view the antecedents of the appellant as well as no objection given by the respondent, we deem it a fit case to extend benefit of probation to the appellant. Accordingly, the impugned sentence order is modified and the benefit of probation is given to the appellant subject to following conditions:

- a) That the appellant shall pay the due amount in terms of the undertaking given by him.
- b) That the appellant shall furnish probation bonds in the sum of Rs.25,000/- for a period of one year under

Section 4(1) of the Probation of Offenders Act before learned Area/Duty Magistrate within 15 days from today.

c) That the appellant shall keep good behaviour and peace during such period.

d) The fine amount already deposited by the appellant shall be treated as costs of the proceedings.

e) In case the appellant fails to fulfill these conditions or if he fails to pay the due amount till the settled date, his appeal against impugned sentence order shall be dismissed automatically and learned Area Magistrate shall be at liberty to take necessary steps strictly in accordance with rules for sending the appellant to jail to serve the remaining part of his sentence.”

As the parties have compromised the matter and have buried the hatchet, no purpose would be served by punishing the petitioner, who has ultimately complied with the terms of the award dated 12.03.2022 though belatedly. The delay caused in complying with the award has been attributed to the unavoidable circumstances in the family of the petitioner and now the respondent-complainant has received his entire amount and is fully satisfied having no grudge left against the petitioner. In these circumstances, the delay caused on the part of the petitioner in honouring the award is condoned and the impugned order dated 02.07.2022 is set aside subject to his depositing Rs.9,000/- (being 10% of the cheque amount) with the Poor Patients' Welfare Fund, PGIMER, Chandigarh within a period of two weeks from today. In case, the petitioner has not complied with the condition (b) of the award dated 12.03.2022 till date, he is granted four weeks time from today to comply with the same.

Petitioner is directed to file receipt of abovesaid amount of

Rs.9,000/- in the office/registry within aforesaid period. In case the petitioner fails to deposit the abovesaid amount within two weeks from today, the office is directed to list the present case in the ordinary list as IOIN for further orders.

The petition is allowed in above terms.

07.02.2023
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No

(RAJESH BHARDWAJ)
JUDGE