

CRM-50575-2023
in/and CRR-2764-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRM-50575-2023
in /and CRR-2764-2023 (O & M)
Date of decision: 04.12.2023**

Lasky Kumar

.... Petitioner

V/s

Ravi Jain and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sahil Soi, Advocate, for the petitioner.

Mr. Sandeep Kumar Bansal, Advocate,
for respondent No.1.

Mr. Kirat Singh Sidhu, DAG, Punjab,
for respondent No.2-State.

JASJIT SINGH BEDI, J. (Oral)

The present revision petition has been filed against the order dated 19.09.2023 passed by the Additional Sessions Judge, Jalandhar, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 12.03.2018 passed by the Judicial Magistrate 1st Class, Jalandhar, has been dismissed.

2. The brief facts of the case are that the complainant had been visiting the accused who was running the business under the name and style of Harris Dyers and Dry Cleaners. As the accused took Rs.12,00,000/- from the complainant on 10.04.2014 and agreed to return part payment of the said amount in the month of May 2014 and the remaining amount in the

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month of September 2014. In the month of May 2014, the accused failed to return the part payment but he executed an undertaking on 30.05.2014 wherein he confirmed his undertaking to return the amount upto September, 2014 and issued three post dated cheques in favour of the complainant including a cheque No.569423 dated 16.09.2014 for an amount of Rs.4,00,000/- drawn on HDFC Bank Ltd. On presentation of the aforesaid cheque for encashment, the same was received back unpaid vide memo dated 09.12.2014 with the remarks "Accounts Closed". The accused was served with a legal notice dated 05.01.2015 within time but he failed to make the payment, leading to initiation of proceedings under Section 138 of the Negotiable Instruments Act.

3. In the complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the complainant, the petitioner-accused was summoned to face the trial. The evidence was led and ultimately, accused-petitioner was held guilty and accordingly, convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to undergo rigorous imprisonment for a period of two years and it was also ordered that the accused will pay compensation under Section 357 of the Cr.P.C. to the tune of the cheque amount i.e. Rs.4,00,000/- at the rate of 9% p.a. from the date of the cheque till date i.e. 12.03.2018

4. That aggrieved against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Additional Sessions Judge, Jalandhar, which came to be dismissed on 19.09.2023.

5. Still aggrieved, the present revision petition has been preferred by the petitioner. Alongwith the present criminal revision, an application

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been filed for permitting the compounding of the offences under Section 138 of the Negotiable Instruments Act as the parties have amicably settled the dispute with intervention of respectable persons of the society. In terms of the compromise deed dated 28.11.2003 (Annexure P-1) the petitioner-accused has made a payment of Rs.5,75,000/- in cash as lump sum payment towards both the dishonoured cheques i.e. Cheque No.908894 dated 23.09.2014 and Cheque No.569423 dated 16.09.2014. It would be relevant to mention here that a reading of Section 147 of the Negotiable Instruments Act read with Section 320 Cr.P.C. would show that where a settlement has been effected, the offence under Section 138 of the Negotiable Instruments Act can be compounded on account of the fact that a mutual compromise has been effected between the parties.

6. The learned counsel for respondent No.1 alongwith the learned State counsel for respondent No.2 contend that as the matter has been settled between the parties, they have no objection if the prayer made in the application for compounding the offence under Section 138 N.I. Act is allowed and the petitioner is acquitted of the charges framed against him.

7. I have heard the learned counsel for both the parties.

8. This Hon'ble Court in 'Ramesh Chander Vs. State of Haryana and another, 2007(1) RCR (Criminal) 245' held as under:-

"4. As per the provisions of Section 147 of the Act, the offence under Section 138 is compoundable. Section 147 reads as under:

*"Offence to be compoundable-
Notwithstanding anything contained in the Criminal Procedure Code, 1973(2 of 1974), every offence punishable under this Act shall be compoundable".*

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5. The compounding of the offence under Section 138 can be done during the trial of the case as well as by the High Court or Court of Session while acting in the exercise of its power of revision under Section 401 Criminal Procedure Code Reference may be made to Section 320(6) Criminal Procedure Code in this regard.

6. Further, under Section 320(8) Criminal Procedure Code the composition of an offence shall have the effect of acquittal of the accused with whom the offence has been compounded.”

9. This Court in 'Vatsa Electronics Vs. Pala Ram & Anr. decided on 09.03.2022 in CRR-1585-2019' has also held that once a settlement is being effected, then in terms of Section 147 of the Negotiable Instruments Act and Section 320 Cr.P.C., the accused ought to be acquitted as the offence stands compounded.

10. In view of the above, since, the parties have voluntarily settled the disputes between themselves, it is a fit case for allowing them to compound the offence.

11. Accordingly, the revision petition is allowed and the order dated 19.09.2023 passed by the Additional Sessions Judge, Jalandhar, as well as the judgment of conviction and order of sentence dated 12.03.2018 passed by the Judicial Magistrate 1st Class, Jalandhar, are hereby set aside. The petitioner is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

12. The petitioner is ordered to be released forthwith in case he is not required in any other case.

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13. Since the main petition has been disposed of no order needs to be passed in the pending application(s), if any,

(JASJIT SINGH BEDI)
JUDGE

December 04, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No