

301

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-48-2024 (O&M)

Date of decision: 23.01.2024

AMIT KADYAN

....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Ajay Kadyan, Advocate,
for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

Mr. Akshat Dalal, Advocate, for respondent-complainant-2.

.....

SANJIV BERRY, J. (ORAL)

1. In compliance of the order dated 12.01.2024, report dated 18.01.2024 of learned Chief Judicial Magistrate, Panipat, has been received. The same is taken on record.

2. The instant revision petition has been preferred under Section 482 Cr.P.C. against the impugned judgment dated 26.08.2022 passed by the Additional Sessions Judge, Panipat in Criminal Appeal No. 59 of 2021, titled as Amit Kadyan vs. M/s Vardhman Motors, whereby the judgment of conviction dated 20.09.2017 and order of sentence dated 21.09.2017 passed by the learned Judicial Magistrate Ist Class, was upheld.

3. It is, *inter alia*, contended that in a complaint case i.e. CIS No. 1534 of 2014, titled as '*Ms. Vardhman Motors vs. Amit Kadyan*'

preferred under Section 138/142 of the Negotiable Instruments Act (hereinafter referred to as 'N.I. Act') filed by the respondent-M/s Vardhman Motors, against the petitioner -Amit Kadyan, learned Judicial Magistrate Ist Class, Panipat convicted and sentenced the present petitioner to rigorous imprisonment for a period of 1 year and to pay compensation to the tune of ₹3,20,000/- and in default of payment of compensation he shall further under go 2 months rigorous imprisonment vide judgment of conviction dated 20.09.2017 and order of sentence dated 21.09.2017. The same was challenged by the petitioner and the learned Additional Sessions Judge, Panipat, while deciding the criminal appeal, i.e. Criminal Appeal No. 59 of 2021, upheld the same, hence the criminal revision preferred by the present petitioner.

4. Learned counsel for the petitioner contends that in the meanwhile with the intervention of the respectable, compromise has been effected between the parties and demand draft bearing number 273306 of State Bank of India dated 05.12.2023 amounting to ₹1,70,000/- has been prepared in favour of respondent No.2 as full and final payment and compromise has been effected between parties(Annexure P-1), as such, he prays for acceptance of the revision petition.

5. Learned counsel representing the complainant-respondent No.2 has admitted the fact that the complainant has already received ₹1,70,000/- by way of demand draft and he has specific instructions from the complainant-respondent that he has no objection in case the revision petition is allowed.

6. After hearing the respective submissions and perusing the record, the factual position as it emerges is that a criminal complaint under Section 138 of N.I Act had been filed against the petitioner by the respondent wherein the learned Judicial Magistrate Ist Class, Panipat, had convicted and sentenced the petitioner vide judgment of conviction dated 20.09.2017 and order of sentence dated 21.09.2017, thereby holding the petitioner guilty for the offence punishable under Section 138 of the N.I. Act. It is not disputed that the aforesaid judgment of conviction and order of sentence (*supra*) was challenged by the petitioner unsuccessfully and the same was dismissed vide order dated 26.08.2022 in the appeal.

7. Aggrieved by the same, learned counsel for the petitioner had preferred the instant petition.

8. During the course of proceedings, settlement was effected between the parties and an amount of ₹1,70,000/- was paid to respondent, as has been mentioned by learned counsel for the petitioner and is not disputed by learned counsel for the respondent and report to this effect has been called from the Chief Judicial Magistrate, Panipat qua the genuineness of the compromise. As per the report dated 18.01.2024 of the learned Chief Judicial Magistrate, Panipat, the compromise so effected between the parties is out of the free will and without any external pressure or coercion.

9. Learned counsel representing the complainant-respondent has not opposed the request of the petitioner for acceptance of the revision petition and has stated that he has clear instructions from the complainant-respondent in this regard.

10. This be the case, the case of the parties found fairly covered within the ambit of ***Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097***, wherein it has been held that in case, compromise has been effected at the stage of as in the present case, 15% of the cheque amount would have to be deposited by the petitioner as costs. The guidelines framed in the aforesaid judgment, i.e. ***Damodar S. Prabhu (supra)***, are as under: -

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

11. In the light of the guidelines given by the Hon’ble Apex Court in the aforesaid judgment, i.e. *Damodar S. Prabhu (supra)*, petition is allowed subject to the petitioner depositing 15% of the cheque amount, i.e. ₹24,000/- before the High Court Legal Services Committee, Chandigarh which learned counsel for the petitioner undertakes to deposit today itself.

12. Thus, keeping in view of the above said facts and circumstances, present petition is allowed and as a consequent, the impugned judgment of conviction dated 20.09.2017 and order of sentence dated 21.09.2017 passed by learned Judicial Magistrate Ist Class, Panipat, and the order in appeal, i.e. 26.08.2022, passed by learned Additional sessions Judge, Panipat, stands set aside, and petitioner is ordered to be released forthwith, if not required in any other case, subject to deposit of above said amount of 15% of the cheque.

13. All the pending miscellaneous application(s), if any, stand disposed of in view of the abvoe said judgment.

23.01.2024
Gyan

(SANJIV BERRY)
JUDGE

- | | | |
|-----|----------------------------|--------|
| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |