



262 (2 cases)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(1) Criminal Revision No. 122 of 2024 (O&M)
Date of Decision: 13.05.2024

Anand Sharma Petitioner

Versus

Mahavir Prasad Respondent

AND

(2) Criminal Revision No. 127 of 2024 (O&M)

Anand Sharma Petitioner

Versus

Mahavir Prasad Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Baljeet Beniwal, Advocate
for the petitioner(s).

Mr. Himanshu Kalera, Advocate
for the respondent(s).

HARKESH MANUJA, J. (ORAL)

CRM-3016-2024 in CRR-122-2024 and
CRM-3034-2024 in CRR-127-2024

Prayer in the present applications moved on behalf of the
applicant-petitioner(s) is for condonation of delay of 3386 days in filing
the present revision petition(s).

It is, *inter alia*, contended that since the applicant left his
home, as such the present revision petition(s) could not be filed in time.
Moreover, a settlement has been arrived at between the parties; thus,
prayer is for condonation of delay in filing the present revision petition(s).

Upon notice, learned counsel for the respondent-complainant has no objection against the prayer made in the present application(s).

In view of the above as well as for the reasons mentioned in the application, which make out sufficient cause, the same are **allowed**. The delay of 3386 days in filing the present revision petition(s) is condoned.

MAIN CASE(S)

The petitioner, by way of present petitions, seeks setting aside of the order dated 26.07.2012 passed by learned Additional Sessions Judge, Faridabad, whereby the appeal(s) filed by him against the judgment(s) of conviction dated 25.02.2012 and order(s) of sentence dated 29.02.2012 passed by the learned Judicial Magistrate Ist Class, Faridabad, was dismissed.

[2] The petitioner was convicted in a criminal complaint No(s).3191/3192 of 22.12.2005, titled “*Mahavir Prasad Versus Anand Sharma*”, under Section 138 of the Negotiable Instruments Act, 1881 (**for short “the NI Act”**), vide judgment dated 25.02.2012 and was sentenced vide order dated 29.02.2012 passed by learned Judicial Magistrate Ist Class, Faridabad, to undergo rigorous imprisonment for a period of one year and to pay compensation to the tune of Rs. 1,30,000/- (in total) (Rs. 46,000/- + Rs. 84,000/- in respective petitions) within one month and in default thereof, to further undergo rigorous imprisonment for two months.

[3] Appeal(s) preferred by the petitioner against the aforesaid judgment(s) of conviction and order(s) of sentence was also dismissed by the learned Additional Sessions Judge, Faridabad on 26.07.2012. Hence, the present revision petition(s).

[4] At the outset, learned counsel for the petitioner(s) submits that on the previous date of hearing i.e. 07.05.2024, cash amount of Rs.1,30,000/- stood handed over to the learned counsel for respondent. He further submits that the matter has since been compromised and the settled amount of Rs. 3,50,000/- (in total) has been paid to respondent No.2-complainant, hence, the continuation of proceedings against the petitioner would be a futile exercise and thus, not justified.

[5] Learned counsel for respondent No. 2, on instructions, does not dispute the aforesaid factual position and states that nothing remains due. He also submits that he has no objection in case the present revision petitions are accepted on the basis of settlement arrived at between the parties.

[6] I have heard learned counsel for the parties and gone through the paper-book.

[7] A conjoint reading of Section 138 read with Section 147 of the NI Act, makes it clear that every offence punishable under the NI Act is compoundable. Section 147 of the aforesaid Act is reproduced hereunder for reference:-

“147 Offences to be compoundable. —

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

[8] Applying the aforesaid proposition to the facts and circumstances of the present case, the petitioner having settled the dispute with respondent No. 2-complainant by making the entire payment, offence committed by the petitioner under Section 138 of the NI Act, thus, stand

compounded.

[9] Furthermore, following the law laid down by the Hon'ble Supreme Court in case of “***B.V. Seshaiiah Versus The State of Telangana & Anr., 2023(1)R.C.R. (Criminal) 831***”, the compounding of offence has to be followed by setting aside of conviction order passed by the Court below. Reference may be made to Paragraph Nos. 10-13 thereof, which are reproduced hereunder:-

“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. Dishonour 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.*

12. *It must also be noted that the respondent No.2 was duty-bound to file a compromise petition before the High Court, and by not doing the same has withdrawn key information from the High Court, which has led to an unwarranted confirmation of the Appellants' conviction.*
13. *We, therefore, allow these Appeals and set aside the order of conviction passed by the trial Court. It is, however, kept open to the parties to settle their dispute as per the terms of the Memorandum of Understanding."*

[10] Thus, in view of the aforesaid facts as well as keeping in mind the law laid down in the aforementioned judgments, the petitions are **allowed** and the judgment of conviction and order of sentence (supra) passed by the Courts below are hereby set aside. The petitioner is hereby acquitted in the meaning of Section 320 (8) Cr.P.C.

[11] Pending miscellaneous application(s), if any, shall also stand disposed off.

May 13, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>