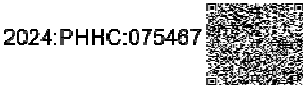


CRR No.589 of 2024 (O&M)



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

264

CRR No.589 of 2024 (O&M)
Date of Decision: 27.05.2024

KARAN KAPOORPetitioner

Vs

RAJPAL SINGH ...Respondent

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Akhil Ahuja, Advocate for the petitioner
Ms. Zaheen Kaur, Advocate for the respondent.

HARKESH MANUJA, J. (Oral)

CRM No.12904 of 2024

By way of present application filed under Section 5 of Limitation Act, prayer has been made for condonation of delay of 1500 days in filing the present application.

Learned counsel representing the respondent states that since the petitioner has discharged his liability by paying the entire cheque amount to the respondent and the parties have compromised the matter, therefore, she does not wish to file reply to the application. She further states that respondent has no objection, if the delay of 1500 days in filing the present revision petition is condoned.

In view of above, besides even considering the averments made in the application, which make out sufficient cause for condoning the delay, the present application is allowed. Delay of 1500 days in filing the present revision petition is condoned.

2024:PHHC:075487

**CRR No.589 of 2024 (O&M)****CRM No.22413 of 2024**

Learned counsel for the applicant-petitioner does not press this application.

Dismissed as not pressed.

CRR No.589 of 2024 (O&M)

[1]. Challenge in the present revision petition is to the judgment dated 22.02.2018 passed by the Additional Sessions Judge, Fatehgarh Sahib, whereby the appeal filed against the judgment of conviction and order of sentence dated 05.04.2017 passed by the Addl. Chief Judicial Magistrate, Fatehgarh Sahib stood dismissed, thereby upholding the judgment of conviction and order of sentence passed by the Trial Court.

[2]. On account of dishonour of cheque for a total amount of Rs.5,65,000/- a complaint under Section 138 of the Negotiable Instruments Act, 1881 came to be filed at the instance of respondent/complainant against the petitioner. On the basis of evidence recorded, learned Trial Court vide judgment/order dated 05.04.2017, convicted the petitioner under Section 138 of the N.I. Act, 1881 and sentenced him to undergo rigorous imprisonment for a period of one year and to pay the amount of cheque in question as compensation.

[3]. Aggrieved thereof, the petitioner filed first appeal before the court of Additional Sessions Judge, Fatehgarh Sahib, which was dismissed vide judgment dated 22.02.2018, thereby upholding the judgment of conviction and order of sentence dated 05.04.2017 passed by the Trial Court.

[4]. Post decision of the First Appellate Court, the petitioner did not surrender himself before the Trial Court and has filed the present petition based on compromise while placing reliance upon decision dated 30.05.2017 in case of '*Atul*



CRR No.589 of 2024 (O&M)

Sood and others vs. Cholamandlam Investment and Finance Company Limited and others’ bearing CRR No.3704 of 2016.

[5]. Impugning the aforesaid judgments passed by both the Courts below, learned counsel for the petitioner submits the parties entered into a settlement/compromise and in view thereof that an amount of Rs.2,00,000/- was received by the complainant before the Lok Adalat on 09.12.2017; Rs.1,00,000/- was given to the him at the time of issuance of notice of motion before this Court on 20.03.2024 and today a demand draft No.293562 dated 14.05.2014 amounting to Rs.4,00,000/- has been handed over to the respondent, who is present in Court and has been identified by his counsel. In this way, the petitioner has paid an amount of Rs.7,00,000/- (Rupees Seven Lakhs only) in total to the respondent and has discharged his entire liability towards the respondent/complainant and now nothing remains due as the entire payment against the cheque amount stands paid.

[6]. The factum of compromise has even been admitted by the learned counsel representing the respondent/complainant as such there is no outstanding balance amount against the petitioner. Learned counsel also submits that she has no objection in case the present revision petition is accepted on the basis of settlement arrived at between the parties.

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

[8]. A conjoint reading of Section 138 read with Section 147 of the 1881 Act, makes it clear that every offence punishable under 1881 Act is compoundable. Section 147 of the aforesaid Act is reproduced hereunder for reference:-

“147 Offences to be compoundable. —



CRR No.589 of 2024 (O&M)

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

Applying the aforesaid proposition to the facts and circumstances of the present case, the petitioner having settled the dispute with the respondent-complainant having made the entire payment, offence under Section 138 of the NI Act, thus, stands compounded. The aforesaid view is mainly derived from the proposition of law laid down by the Hon'ble Supreme Court in case of **“Ghanshyam Gautam and another vs. Usha Rani (since deceased) thr. LRs.,** passed in Criminal Appeal No.65 of 2024, SLP CrI. No.3289-2018, decided on 04.01.2024.

[9]. Furthermore, following the law laid down by the Hon'ble Supreme Court in case of **“B.V. Seshaiiah Vs. 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 Courts below. Reference may be made to Paragraph Nos. 10 to 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



CRR No.589 of 2024 (O&M)

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."*

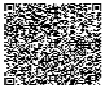
[10]. Moreover, learned counsel for the petitioner on instructions from his client, submit that he volunteer to serve public cause by providing one Water Cooler with R.O. and two Wheelchairs to the Civil Hospital, SAS Nagar (Mohali), Punjab.

[11]. In view of the discussion made hereinabove and to give a complete quietus to the litigation, the present revision petition is accepted. The petitioner having admittedly discharged his liability towards the cheque in question, the judgments of conviction and orders of sentence passed by both the Courts below are hereby set aside, resulting into acquittal of the petitioner.

[12]. The aforesaid order, however, shall be subject to providing one Water Cooler with R.O. and two Wheelchairs to the Civil Hospital, SAS Nagar (Mohali),

CRR No.589 of 2024 (O&M)

2024:PHHC:075487



Punjab within a period of two weeks from today as volunteered by the petitioner against due receipt, issued by the concerned Civil Surgeon, who shall prepare an inventory in this regard for its regular inspection by the Director concerned. A copy of the receipt shall also sent to the office Advocate General, Punjab at the earliest for maintaining records in this regard.

[13]. All other pending applications, if any, shall stand disposed of accordingly.

May 27, 2024

Atik

Whether speaking/reasoned

Whether reportable

(HARKESH MANUJA)

JUDGE

Yes/No

Yes/No