

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CRR No.669 of 2024 (O&M)
Date of Decision: 02.05.2024

BALBIR SINGH SANDHUPetitioner(s)

Vs
BRAR AGRO COMPANYRespondent(s)

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

Present: Mr. Shivinderpal Singh, Advocate for
Mr. B.S. Bhalla, Advocate
for the petitioner.

Ms. Samriti Singla, Advocate
for the respondent.

HARKESH MANUJA, J. (Oral)

CRM-14889-2024

Prayer made in this application is for condonation of delay of 83 days
in filing the present petition.

Upon advance notice, learned counsel for the respondent has no
objection against the prayer made in the application.

Upon hearing learned counsel for the parties and in view of averments
made in the application, the same is allowed. Delay of 83 days in filing the present
petition is condoned.

CRM-18850-2024

For the reasons mentioned in the application, the same is allowed.
Accompanying document i.e. Compromise dated 22.04.2024 (Annexure P-1) is
taken on record.

CRR No.669 of 2024 (O&M)

[1]. Challenge in the present revision petition is to the judgment dated 12.10.2023 passed by the Additional Sessions Judge, Moga, whereby the appeal filed against the judgment of conviction and order of sentence dated 30.11.2022 passed by the Sub Divisional Judicial Magistrate, Nihal Singh Wala, District Moga stood dismissed, thereby upholding the judgment of conviction and order of sentence passed by the Trial Court.

[2]. On account of dishonor of cheque for a total amount of Rs.7,50,000/-, a complaint under Section 138 read with Section 142 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 30.11.2022, convicted the petitioner under Section 138 of the N.I. Act, 1881 and sentenced him to undergo rigorous imprisonment for a period of two years. The complainant was also awarded a sum of Rs.7,50,000/- as compensation under Section 357(3) Cr.P.C.

[3]. Aggrieved thereof, the petitioner filed first appeal before the court of Additional Sessions Judge, Moga, which was dismissed vide judgment dated 12.10.2023, thereby upholding the judgment of conviction and order of sentence dated 30.11.2022 passed by the Trial Court.

[4]. Impugning the aforesaid judgments passed by both the Courts below, learned counsel for the petitioner submits that during the pendency of present revision petition, better sense has prevailed and the petitioner has discharged his entire liability towards respondent-complainant. Both the parties have entered into a compromise dated 22.04.2024, which has been annexed as Annexure P-1. The factum of compromise has even been admitted by the learned counsel representing

respondent/complainant as such there is no outstanding balance against the petitioner. Moreover, learned counsel for the petitioner on instructions from his client, submit that he volunteers to serve public cause by providing one ECG machine to the Civil Hospital, Moga.

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

[6]. 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. —
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.

[7]. Furthermore, following the law laid down by the Hon'ble Supreme Court in case of **“B.V. Seshiah 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 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.”*

[8]. 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. Petitioner be released forthwith, however, subject to providing one ECG machine to the Civil Hospital, Moga, 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.

[9]. All other pending applications are also disposed of accordingly.

May 02, 2024	(HARKESH MANUJA)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No