IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-20180 and 20181 of 2024
in CRR-765-2024 (O & M)
Date of decision: 09.05.2024

Sukhchain Singh .... Petitioner

V/s

M/s Tara Chand Dinesh Kumar and ors.
...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Harmanpreet Kaur, Advocate,
and Mr. Naresh Paul Chandel, Advocate,
for the petitioner.

Mr. Ritesh K. Sharma, Advocate,
for respondents No.1 and 2.

Mr. Rupinder Singh Jhand, Addl.A.G., Haryana,
for respondent No.3.

*****

JASJIT SINGH BEDI, J. (Oral)

CRM-20180-2024

This is an application for advancement of the next date of hearing i.e. 29.07.2024 to some earlier date.

For the reasons mentioned in the application, same is allowed. The next date of hearing fixed in the main case is advanced to today itself and the matter is taken up for hearing.

CRM-20181-2024

The application for placing on record a compromise and affidavit of respondent No.2 as Annexure A-3 and A-4, is allowed as prayed for subject to all just exceptions. The same are taken on record.

CRR-765-2024

The present revision petition has been filed against the judgment dated 05.02.2024 passed by the Additional Sessions Judge, Kurukshetra, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 11/12.02.2021 passed by the Judicial Magistrate 1st Class, Pehowa, has been dismissed.

2. The brief facts of the case are that the complainant No.1/respondent No.1-M/s Tara Chand Dinesh Kumar was a proprietorship firm and complainant No.2/respondent No.2-Dinesh Kumar was its sole proprietor. The complaints used to advance money to its customers/provides financial help in anticipation to bring their agriculture produce to the commission agency of the complainants. Accused/petitioner-Sukhchain Singh was also one of the customers at the shop of complainant No.1 for the last three years and used to sell his agricultural produce through the commission agency of the complainants and used to take advances from complainants to satisfy his agricultural and domestic needs. The complainant No.1 opened a current mutual and running account of accused in his account book in the name of accused. The accused undertook to pay interest on the amount of advance remaining unpaid which was the customary rate of interest in the Anaj Mandi, Pehowa. On 09.05.2017, an amount of Rs.21,59,390/- was due against the accused. Thereafter, on

15/.05.2017, for part payment and in discharge of his existing liabilities, the accused had issued a cheque bearing No.536508 dated 15.05.2017 for a sum of Rs.19,60,000/- from his bank account No.4096000100045043 drawn at Punjab National Bank, SST Nagar, Patiala, IFSC Code PUNB0409600 in favour of the complainant No.1 and assured that the cheque would be honoured as and when presented in the bank. On presentation of the aforesaid cheque for encashment, the same was dishonoured and received back with the remarks “Funds Insufficient” vide information letter dated 18.05.2017. The accused was served with a legal notice dated 07.06.2017 for the repayment of the aforesaid amount 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 trial. The evidence was led and ultimately, the 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 simple imprisonment for a period of two years and to pay a compensation to the tune of Rs.25,00,000/- and in default of the payment of the compensation to further undergo simple imprisonment for a period of 06 months.

4. Aggrieved against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Additional Sessions Judge, Kurukshetra, which came to be dismissed on 05.02.2024.

5. Still aggrieved, the present revision petition has been preferred by the petitioner.

6. The learned counsel for the petitioner contends that during the pendency of the revision petition, a compromise (Annexure A-3) has been effected between the parties and an affidavit of Mohak Gupta, the legal representative of respondent No.2-Dinesh Kumar (since deceased), the sole proprietor of the complainant firm, (A-4) in this regard has been placed on record. He contends that the parties have amicably settled the dispute with intervention of respectable persons of the society and in the affidavit (Annexure A-4) it has been clearly stated that the complainant-firm has received the payment through Rattan Singh brother-in-law of the petitioner-accused Sukhchain Singh and nothing is due towards him. In view of Section 147 of the Negotiable Instruments Act read with Section 320 Cr.P.C. 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 respondents No.1 and 2 alongwith the learned State counsel for respondent No.3 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".

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 subject to payment of 15% of the cheque amount of Rs.19,60,000/- to be deposited with Spinal Rehab Centre, Chandigarh Plot No.1, Madhya Marg, Sector 28-

A, Chandigarh, 0172-4610311, the judgment dated 05.02.2024 passed by the Additional Sessions Judge, Kurukshetra, as well as the judgment of conviction and order of sentence dated 11/12.02.2021 passed by the Judicial Magistrate 1st Class, Pehowa, 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.

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

May 09, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No