



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Criminal Revision No. 971 of 2024 (O&M)
Date of Decision: 14.05.2024

Ajay Kumar

..... Petitioner

Versus

State Bank of India

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Piyush Setia, Advocate
for the petitioner.

Mr. Somesh Gupta, Advocate
for the respondent.

HARKESH MANUJA, J. (ORAL)

CRM-21128-2024 in CRR-971-2024

Prayer in the present applications moved on behalf of the applicant-petitioner is for condonation of delay of 215 days in filing the present revision petition.

It is, *inter alia*, contended that since the applicant is an illiterate person and being behind the bars, present revision petition could not be filed in time. Moreover, the applicant has settled the matter with the respondent-Bank under One Time Settlement (OTS) and nothing remains due; thus, prayer is for condonation of delay in filing the present revision petition.

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

In view of the above as well as for the reasons mentioned in the application, which make out sufficient cause, the same is **allowed**. The delay of 215 days in filing the present revision petition is condoned.

MAIN CASE

The petitioner, by way of present petitions, seeks setting aside of the order dated 13.07.2023 passed by learned Sessions Judge, Fazilka, whereby the appeal filed by him against the judgment of conviction and order of sentence dated 13.03.2023 passed by the learned Judicial Magistrate Ist Class, Abohar, was dismissed.

[2] The petitioner was convicted in a criminal complaint CIS No. NACT-945-2018, dated 04.07.2018, titled “*State Bank of India Versus Ajay Kumar*”, under Section 138 of the Negotiable Instruments Act, 1881 (**for short “the NI Act”**), vide judgment dated 13.03.2023 and was sentenced vide order of even date passed by learned Judicial Magistrate Ist Class, Abohar, to undergo rigorous imprisonment for a period of two years and to pay compensation to the tune of Rs. 6,85,000/- and in default thereof, to further undergo simple imprisonment for three months.

[3] Appeal preferred by the petitioner against the aforesaid judgment of conviction and order of sentence was also dismissed by the learned Sessions Judge, Fazilka on 13.07.2023. Hence, the present revision petition.

[4] At the outset, learned counsel for the petitioner submits that the matter has since been compromised and the settled amount, after One Time Settlement Scheme, has already been paid to the respondent-complainant, hence, the continuation of proceedings against the petitioner would be a futile exercise and thus, not justified. Learned counsel has also placed on

record No Objection Certificate issued by the respondent-Bank in favour of petitioner, annexed as **Annexure P-1**.

[5] Learned counsel for respondent-Bank, on instructions, does not dispute the aforesaid factual position and states that nothing remains due. He has produced a copy of letter of even number dated 10.05.2024, issued by the respondent-Bank, stating that the case in hand may be withdrawn against the petitioner on account of having settled the matter under One Time Settlement Scheme 2023-24. Copy of the aforesaid letter dated 10.05.2024 is taken on record. He also submits that he has no objection in case the present revision petition is 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 the respondent-Bank/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. Sessaiah 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 petition is **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. He be released from custody forthwith, if not required in any other case.

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

May 14, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

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