

Neutral Citation No:2024:PHHC:115216

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-4155-2012 (O&M)
DECIDED ON: 03.09.2024

LAKHWINDER SINGH
.....PETITIONER
VERSUS
M/S PKF FINANCE LTD
.....RESPONDENT
AND

2024 PHHC 115226



2. CRR-4156-2012 (O&M)
LAKHWINDER SINGH
.....PETITIONER
VERSUS
M/S PKF FINANCE LTD
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Ms. Tarranum Madan, Advocate for
Mr. R.S. Randhawa, Advocate
for the petitioner(s).

Ms. Vralika Bassi, Advocate
for the respondent.

SANDEEP MOUDGIL, J

1. Vide this common order, I shall be disposing off, both the petitions together, as common question of law is involed in both the petitions.

2 Both the afore-said revision petitions have been preferred against judgment dated 27.11.2012 passed by Additional Sessions Judge, Jalandhar whereby, the appeal preferred against the orders dated 23.09.2010 passed by Judicial Magistrate Ist Class, Jalandhar, vide which the petitioner was convicted and

sentenced to undergo a rigorous imprisonment for a period of one year along-with fine to the tune of Rs.5000/-, in complaint cases bearing No. 3030/2/2009 and 4335/2/2009, dated 05.07.2004, under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'Act of 1881'), has been upheld.

3. It is worthwhile to mention here that on 15.07.2024, it was averred by the counsel for the petitioner that the parties have settled the matter and submitted that the petitioner does not want to challenge his conviction on merits.

4. Accordingly, applications bearing CRM Nos. 35338 and 35339-2024 have been filed by the applicant/petitioners under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 read with Section 147 of Act of 1881 for compounding of the offences, as compromise has already been effected between the parties, which has been reduced into writing vide compromise deed dated 30.04.2024 (Annexure P-3).

5. The petitioner(s) stands convicted under Sections 138 of Act of 1881 vide judgment of conviction dated 23.09.2010 and vide order of the even date passed by Judicial Magistrate Ist Class, Jalandhar, he was sentenced to undergo RI for a period of one year along-with fine to tune of Rs.5000/- for commission of offence under Section 138 of Act of 1881 and the appeal preferred against the afore-said judgment of conviction and order of sentence has been dismissed vide judgment dated 27.11.2012 passed by Additional Sessions Judge, Jalandhar.

6. During the pendency of present revision petitions, the petitioner and complainant have entered into out of Court settlement and the same has been reduced into writing vide compromise deed dated 30.04.2024. Copy of, which has been annexed with the applications as Annexure P-3.

7. The accused and complainant have amicably settled the matter between them in terms of the compromise deed dated 30.04.2024 (Annexure P-3). A perusal

of the documents reveal that the settlement has not been secured through coercion, threats, social boycotts, bribes, or other dubious means. The complainant has willingly consented to the nullification of criminal proceedings. There is no objection from the respondent in case present revision petitions are allowed.

8. In the given facts, the occurrence does not affect public peace or tranquillity, moral turpitude or harm the social and moral fabric of the society or involve matters concerning public policy. The rejection of compromise may lead to ill will and moreover, the pendency of trial affects career and happiness. There is nothing on the record to *prima facie* consider the accused as an unscrupulous, incorrigible, and professional offender. The purpose of criminal jurisprudence is reformatory in nature and to work to bring peace to family, and society. The exercise of the inherent power for quashing the conviction, sentence and all previous proceedings are justified to secure the ends of justice.

9. At the very initial stage of hearing, a question was raised on behalf of the appellant as to whether an offence under Section 138 of the Act of 1881, could be compounded under Section 147 of the said Act read with Section 320 Cr.P.C.

10. Since a specific power had been given to the parties to a proceeding under the Negotiable Instruments Act under Section 147 to compound the offence, there could be no reason as to why the same cannot be permitted after conviction.

11. Besides, Section 147 by Amending Act 55 of 2002. Such amendment came into effect from 6 th February, 2003, and provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under the Act would be compoundable. In view of the non-obstante clause, the provisions of Section 147 were given an overriding effect over the Code and in view of the clear mandate given to the parties to compound an offence under the Act, reference to Section 320 Cr.P.C. can be made for purposes of comparison

only in order to understand the scope of Section 147 of the Negotiable Instruments Act.

12. Reliance can be placed upon the judgment of Apex Court rendered in the case of **“O.P. Dholakia vs. State of Haryana & Anr.” [(2000) 1 SCC 762]**, wherein it was held that since the petitioner had already entered into a compromise with the complainant and the complainant had appeared through counsel and stated that the entire money had been received by him and he had no objection if the conviction already recorded under Section 138 of the Negotiable Instruments Act is set aside, the Hon’ble Judges thought it appropriate to grant permission, in the peculiar facts and circumstances of the case, to compound the offence. While doing so, this Court also indicated that necessarily the conviction and sentence under Section 138 of the Act stood annulled.

13. The said view has been consistently followed in the following cases; ***(1) Anil Kumar Haritwal & Anr. vs. Alka Gupta & Anr. [(2004) 4 SCC 366]; (2) B.C. Seshadri vs. B.N. Suryanarayana Rao [2004 (11) SCC 510]*** decided by a three Judge Bench; ***(3) G. Sivarajan vs. Little Flower Kuries & Enterprises Ltd. & Anr. [(2004) 11 SCC 400]; (4) Kishore Kumar vs. J.K. Corporation Ltd. [(2004) 13 SCC 494]; (5) Sailesh Shyam Parsekar vs. Baban [(2005) (4) SCC 162]; (6) K. Gyansagar vs. Ganesh Gupta & Anr. [(2005) 7 SCC 54]; (7) K.J.B.L. Rama Reddy vs. Annapurna Seeds & Anr. [(2005) 10 SCC 632]; (8) Sayeed Ishaque Menon vs. Ansari Naseer Ahmed [(2005) 12 SCC 140]; (9) Vinay Devanna Nayak vs. Ryot Sewa Sahakari Bank Ltd. [(2008) 2 SCC 305]***, wherein some of the earlier decisions have been noticed; and ***(10) Sudheer Kumar vs. Manakkandi M.K. Kunhiraman & Anr. [2008 (1) KLJ 203]***, which was a decision of a Division Bench of the Kerala High Court, wherein also the issue has been gone into in great detail.

14. The golden thread in all these decisions is that once a person is allowed to compound a case as provided for under Section 147 of the Negotiable Instruments Act, the conviction under Section 138 of the said Act should also be set aside. In the case of Vinay Devanna Nayak (*supra*), the issue was raised and after taking note of the provisions of Section 320 Cr.P.C., it was held that since the matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of conviction and sentence recorded by all the courts were set aside and the appellant was acquitted of the charge leveled against him.

15. The object of Section 320 Cr.P.C., which would not in the strict sense of the term apply to a proceeding under the Act of 1881, gives the parties to the proceedings an opportunity to compound offences mentioned in the table contained in the said section, with or without the leave of the court, and also vests the court with jurisdiction to allow such compromise. By virtue of Sub-Section (8), the Legislature has taken one step further in vesting jurisdiction in the Court to also acquit the accused/convict of the offence on the same being allowed to be compounded. Inasmuch as, it is with a similar object in mind that Section 147 has been inserted into the Act of, 1881, by amendment, an analogy may be drawn as to the intention of the Legislature as expressed in Section 320(8) Cr.P.C., although, the same has not been expressly mentioned in the amended section to a proceeding under Section 147 of the aforesaid Act.

16. As far as the non-obstante clause included in Section 147 of the Act of 1881 is concerned, the Act of 1881 being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences.

17. It is true that the application under Section 528 of BNNS, 2023 read with Section 147 of the Act of 1881 has been made by the parties after the proceedings had been concluded before the Appellate Court. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings.

18. Accordingly, I find no reason to reject the application under Section 528 of BNNS, 2023 read with Section 147 of the Act of 1881

20. Since the parties have settled their disputes, in keeping with the spirit of Section 147 of the Act of 1881, this Court allows the parties to compound the offence, set aside the judgment of the courts below and acquit the petitioner of the charges against him.

21 Both the revision petitions, as well as applications seeking compounding of offences are, accordingly, allowed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

03.09.2024

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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*