

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3042-2015

Decided on 01.05.2024

Tanvir Ahmed

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. GN Malik, Advocate for the petitioner

Mr. JS Rattu, DAG Punjab

Ms. Samridhi Sareen, Advocate for respondent No.2

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the judgment dated 24.10.2013 passed by learned JMIC, Malerkotla as well as the judgment dated 06.08.2015 passed by ld. Addl. Sessions Judge, Sangrur vide which the judgment of the trial court sentencing the petitioner under Section 138 of Negotiable Instruments Act, 1881 (in short, the 1881 Act) to undergo RI for 1 year, has been upheld.

(2). Learned counsel for the petitioner places reliance upon a settlement arrived at between the parties by way of compromise Ex.A-1, to contend, *inter alia*, that the courts below misdirected themselves, while recording conviction of the petitioner despite the fact that the petitioner already paid the total cheque amount to the complainant and also admitted his signatures on the complainant Ex.A1 and also admitted that as per the compromise, the complainant agreed to withdraw the present complaint. He further submitted that AW-1 Abdul Hamid, who was a marginal witness to the compromise appeared before the court and deposed that the complainant had

received Rs.3.00 lacs from the petitioner, but the courts below failed to appreciate this material aspect of the matter, because of which the impugned judgements have resulted in serious miscarriage of justice.

(3). It is argued that the legal liability of the petitioner could not be established before the courts below inasmuch as once the matter itself has been compromised between the petitioner and the complainant, there was no occasion or reason for the complainant to renege the settlement. Reliance has been placed on **Dr. Amrit Lal vs. State of Haryana & Anr. (CRM-M-38046-2011)** decided on 09.05.2013.

(4). Learned counsel for respondent No.2 contends that the compromise relied upon by the petitioner cannot absolve him from his liability because the agreement saw the light of the day at the time of cross-examination of the complainant and in fact, no money was given by the petitioner to the complainant and as such, the matter was not compounded as per law.

(5). Heard learned counsel for the parties.

(6). It has come on record that the compromise (Ex.A1) was admittedly arrived at between the parties but the courts below held that the said agreement can, in no manner, come to the rescue of the petitioner as merely bringing on record the agreement would not be enough especially in the light of the fact that the complainant is in the denial mode of not having received the money and no document, as such, has been placed on record by the petitioner to support his argument that the money was received by the complainant.

(7). At this stage, it would be relevant to reproduce the contents of the compromise (Ex.A1) which read as under:-

“COMPROMISE

Tanvir Ahmed son of Dilbar Hassan, resident of Mohalla Sadewala, Near Bobby Health Club, Malerkotla, Sangrur. *Party No.1*

Gurpreet Singh son resident of District Harbans Singh, of village Saraud, Tehsil Malerkotla, District Sangrur. *Party No.2*

That a complaint under section 138 of Negotiable Instruments Act has been filed by party No.1 against party No.2 in the court of Sub Divisional Judicial Magistrate, Malerkotla regarding cheque No.074333 Rs.3,00,000/- 098010100130899 dated issued of 16.01.2009 from A/C for No. UTI Bank Ltd. presently Axis Bank Ltd., Nabha and the said complaint is pending for 19.03.2010.

That after filing of the complaint, the parties have compromised the both matter and as per the compromise, the claim of party No.1 is satisfied by party No.2 and both the parties are not having any due pending towards each other.

That the party No.1 does not want to pursue the complaint under section 138 of the Negotiable Instruments Act and would be bound to withdraw the same on the next date of hearing.

That both the parties have consented in the presence of respectable that they will lead a peaceful life. Both the parties have settled their dispute and they do not want to keep the matter pending nor they will file any civil criminal case against each other.

Therefore, the writing is made SO that the same can be used in future. Both the parties would be bound by the terms of the compromise. Dated: 25.02.2010”

(8). On a simple reading of the above settlement, would uncertainly show that the parties have compromised the matter and the claim of the complainant stands settled. It can safely be inferred that the complainant, who has otherwise not denied his signatures on the compromise, was fully satisfied and having received the due amount, only, came forward to sign such settlement and accepted the terms of the settlement as a whole.

(9). When a complainant party enters into a compromise agreement with the accused, it may be for a multitude of reasons – higher compensation, faster recovery of money, uncertainty of trial and strength of the complaint, among others. A complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates. Once parties have voluntarily entered into such an agreement and

agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement. The settlement agreement subsumes the original complaint.

(10). In these circumstances, the findings returned by both the courts below cannot be said to be justified particularly for the reason that evidently, the complainant has received the amount and only thereafter, he became signatory to the settlement. It is not something incomprehensible to infer that the settlement was put on to papers only after the accused-party fulfilled the contents, requirements and acknowledgment from the aggrieved-party for arriving at such settlement otherwise, there can be no settlement at all. The complainant seems to have involved himself in arm-twisting the petitioner which cannot be allowed under the banner of this Court.

(11). For the reason aforestated, this petition is allowed and the judgment and order dated 24.10.2013 passed by learned JMIC, Malerkotla as well as the judgment dated 06.08.2015 passed by ld. Addl. Sessions Judge, Sangrur vide which the judgment of the trial court sentencing the petitioner under Section 138 of Negotiable Instruments Act, 1881 (in short, the 1881 Act) to undergo RI for 1 year, has been upheld, are hereby quashed.

(12). Since the complainant has been misusing the process of law and filed frivolous litigation despite having received his full and final payment of cheque amount, from the petitioner, a cost of Rs.15000/- is imposed on the complainant, to be deposited with the High Court Bar Clerks Association.

01.05.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No