2024:PHHC:107832

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

255 CRR-4146-2017 (O&M)
Date of Decision: 20.08.2024

Jaspal Singh ...Petitioner

Versus

State of Punjab and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Gobind Singh Randhawa, Advocate
for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The present revision petition has been preferred against the impugned judgment dated 19.02.2016 passed by the Court of Additional Sessions Judge, Amritsar, whereby, the judgment of conviction and order of sentence dated 23.01.2015 passed by the Judicial Magistrate 1st Class, Amritsar, were ordered to be upheld and the appeal filed by the present petitioner was ordered to be dismissed.

2. Brief facts of the present case are that the respondent had filed a criminal complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') against the petitioner in the Court of Judicial Magistrate 1st Class, Amritsar,

on account of dishonour of cheque bearing No. 113940 dated 07.05.2012 for a sum of Rs.1,50,000/- drawn on HDFC Bank Limited in favour of the respondent/complainant. After holding the trial, the present petitioner was convicted for the offence punishable under Section 138 of the Act and was sentenced to undergo rigorous imprisonment for a period of one year. The petitioner filed an appeal before the Court of Sessions Judge, Amritsar and vide the impugned judgment dated 19.02.2016, the Court of Additional Sessions Judge, Amritsar, dismissed the appeal filed by the present petitioner and the conviction of the petitioner was ordered to be upheld.

3. Learned counsel for the petitioner contends that during the pendency of the present petition before this Court, the parties have entered into a compromise and the respondent had sworn an affidavit (Annexure P-1) in favour of the petitioner. It is apparent from the affidavit (Annexure P-1) that the petitioner had returned a sum of Rs. 1.20 lacs out of total amount of Rs. 1.50 lacs to the respondent and now during the pendency of the present revision petition, a sum of Rs. 30,000/- has also been returned to the respondent vide bank draft No. 000390 dated 17.08.2024 drawn on Bank of India in favour of the respondent. Learned counsel for the petitioner contends that since the matter has already been settled between the parties and the payment has already been made by the petitioner to the respondent No. 2, the parties may be allowed to compound the offence and the petitioner may be ordered to be acquitted by this Court.

3. On the other hand, learned counsel appearing on behalf of respondent No. 2 also admitted that the compromise between the parties and stated that he has no objection in case the offence is ordered to be compounded by this Court and the petitioner is ordered to be acquitted on the basis of the compromise.

4. Learned counsel for the petitioner by relying upon **Cochin Hotels Co.(P) Ltd. and others Vs. Kairali Granites and others, 2006(2) RCR (Criminal) 333 and K. Subramanian Vs. R. Rajathi represented by POAP Kaliappan, 2010 (1) RCR (Criminal) 184** contended that even after finalization of judgment of conviction and order of sentence, petitioner can resort to compounding mechanism in terms of Section 147 of Negotiable Instruments Act as the offence related to dishonouring of cheque is having compensatory profile and it should be given precedence over punitive mechanism. Offence is almost a civil wrong which has been clothed in a criminal overtone, therefore, the priority should be given to compensatory mechanism

5. Learned counsel also relied upon **Damodar S. Prabhu vs. Sayed Babalal H.(supra) Kaushalya Devi Massand vs. Roopkishore, 2011(2) RCR (Criminal) 298** and contended that the compromise in question would definitely go in long way to strengthen the mutual relationship between the parties and would serve as an ever lasting tool in their favour. This exercise would be in consonance

with the spirit of Section 147 of the Negotiable Instruments Act as endorsed in **Damodar S. Prabhu's case (supra)**

6. For the reasons recorded hereinabove, I deem it appropriate to dispose of the present revision petition in terms of compromise consequently the impugned orders are set aside.

7. So far as 15% of the cheque amount in terms of ratio of **Damodar S. Prabhu's case (supra)** is concerned, I am of the view that Section 147 of the Negotiable Instruments Act does not contain any guideline or procedure for proceeding with the compounding of the offences. Since scheme under Section 320 Cr.P.C cannot be followed in stricto sensu, therefore, Hon'ble Apex Court has also clarified that in order to discourage chronic litigants from delaying the composition of the offence under Section 138 of the Act, the scheme for imposing costs is considered to be a valid means to encourage compounding at the earliest. Valuable time of the Court is also involved in the trial of the cases and the parties are not liable to pay any Court fee in such proceedings, even though the impact of the offence is largely confined to the private parties. The imposition of costs would be a matter of discretion of the Court.

8. In view of the fact that the parties have resolved their differences and have compromised the matter and also the fact that the petitioner is a labourer, I am of the view that 15% of the cheque amount towards cost(s) of litigation can be waived off in the interest of justice.

9. In view of the above discussion, the impugned judgments/order(s) are set aside and the parties are allowed to compound the offence in terms of Section 147 of the Act and petitioner is ordered to be acquitted of the charge.

10. All pending applications, if any, are disposed off, accordingly.

20.08.2024. **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No