

2024:PHHC:089704

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

234

CRR-14-2018 (O&M)
DECIDED ON:13.02.2024

RAJESH KUMAR

...PETITIONER

VERSUS

STATE OF PUNJAB AND ANR.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Aggarwal, Advocate,
for the petitioner.

Mr. Rajeev Verma, DAG, Punjab.

Mr. Sandeep Sharma, Advocate,
for the respondent No. 2

SANDEEP MOUDGIL, J (ORAL)

1. The present revision petition has been preferred against the impugned order dated 12.07.2017 by the Addl. Sessions Judge, Bathinda whereby the judgment of conviction and order of sentence dated 07.09.2016 awarding RI for one year along with the fine of Rs 2000/- for an offence under section 138 of Negotiable Instruments Act (herein after referred to as “Act, 1881”) vide it upheld the judgment of conviction and order of sentence passed by JMIC, Bathinda dated 07.09.2016 in COMA/1232-14.

2. At the outset, learned counsel for the petitioner would submit that vide order dated 26.03.2018, the co-ordinate bench of this Court was pleased to suspend the sentence of the accused/revisionist and subsequently the parties

have affected the compromise dated 08.02.2018 (Annexure P-2) and accordingly, an application for compounding of offence was moved by the accused/revisionist.

3. This Court is conscious of law laid down by the Apex Court in the case titled ***“Gian Singh Vs State of Punjab and Anr.” 2012 (4) RCR (Criminal) 543***, wherein it was held that inherent powers under section 482 CrPC are of wide plentitude without statutory limitation and the guiding factors are: (1) to secure the need of justice, or (2) to prevent abuse of process of court. The court also commented on the offences stated in the FIR, observing:

"Since the offences involved in this case are of a personal nature and are not offences against the society, we had enquired with learned counsel appearing for the parties whether there is any possibility of a settlement. We are happy to note that due to efforts made by learned counsel, parties have seen reason and have entered into a compromise."

4. At the very initial stage of hearing, a question was raised on behalf of the revisionist as to whether an offence under Section 138 of the Act, 1881, could be compounded under Section 147 of the said Act read with Section 320 Cr.P.C. Since the relief of compounding is available to the parties under Section 147 of the Negotiable Instruments Act, there is no reason as to why this Court cannot grant the same, post-conviction, which reads as under:-

“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.”

5. It cannot lose sight by this Court that in order to facilitate the settlement of disputes, the legislature thought it fit to insert Section 147 via Amending Act 55 of 2002, the same came into force from 6th February, 2003, with a proviso that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under the Act would be compoundable.

6. In view of the non-obstante clause, the provisions of Section 147 were given an overriding effect over the Code of Criminal Procedure.

7. The broader meaning and object can be gathered in order to understand the horizon of Section 147 of the Act through the judgment of the 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 appearing through his counsel stated that the entire money had been received by him and he has no objection if the conviction already recorded under Section 138 of the Act, 1881 is set aside. The Court thought it appropriate to grant permission in such circumstances to compound the offence and while doing so, Apex Court also indicated that the conviction and sentence under Section 138 of the Act necessarily stand annulled.

8. 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.

9. The golden thread in all the aforementioned decisions is that, once compounding of offences is allowed in a case as provided for under Section 147 of Act, the conviction under Section 138 of the said Act should also be set aside. In the case of Vinay Devanna Nayak (*supra*), the same question of law 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 revision petition deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of conviction and sentence recorded by all the courts both were set aside and the appellant was acquitted of the charge levelled against him.

10. Coming back to the case in hand, the factual aspects have taken a sharp turn since the date of conviction as though according to the memo returning the cheque by the bank dated 06.06.2014 bears the remark “payment stopped by drawer” but thereafter the amount of loan now already stands repaid as is evident from CRM-7387-2018, whereby a request for compounding of offence was made along with copy of compromise deed dated 08.02.2018 and the respondent-complainant through Mr. Sandeep Sharma, learned Advocate would also submit no objection in case the compounding of offence is ordered and conviction of the petitioner is set aside.

11. The aforesaid turn around subsequent to filing of present revision petition has placed the proposition *pari materia* to the proposition involved in

Vinay Devanna Nayak’s case (supra).

12. The parties to the present lis have settled their dispute which is an admitted position before this Court leaving no iota of doubt to the mind of this Court qua the settlement dated 08.02.2018 (Annexure P-2).

13. Hence, having given a considerable thought and scrutiny of submissions as discussed hereinabove, this Court would conclude to hold that the present petition deserves to be allowed. The offence under Section 138 of the Act in the light of Section 147 thereof is ordered to be compounded. Accordingly, judgment of conviction and order of sentence dated 07.09.2016 passed by Judicial Magistrate Ist Class, Bathinda and judgment passed by Addl. Sessions Judge, Bathinda in appeal dated 12.07.2017 are hereby set aside.

14. Accordingly, the present petition is allowed and the petitioner is hereby acquitted of the offence under Section 138 of the Act, 1881 and the complaint is therefore, quashed.

15. The revision petition, as well as application seeking compounding of offences both are accordingly, allowed in the aforesaid terms.

13.02.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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

Yes
No