*2024:PHHC:**059451***

244 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRR-1564-2023 (O&M)
DATE OF DECISION:-30.04.2024

Narbir Singh ...Petitioner.

vs.

HDFC Bank Ltd. ...Respondent..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Kamal Narula, Advocate for the petitioner.

Mr. Saurabh Bhardwaj, Advocate,
for the respondent.

***

<u>HARKESH MANUJA, J. (Oral)</u>

1. Challenge in the present revision petition is to the judgment dated 09.02.2023 passed by learned Judge, Special Court-cum-Additional District & Sessions Judge-cum-Fast Track Court, Ferozepur, whereby the appeal filed against the judgment of conviction and order of sentence dated 07.08.2019 passed by learned Judicial Magistrate Ist Class, Ferozepur, was dismissed, upholding the same.

2. The facts of the case are that on account of dishonour of cheque bearing No.000003 dated 30.06.2017, amounting to Rs.10,00,000/-, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to "NI Act") came to be filed at the instance of respondent-Bank against the petitioner, resulting into conviction besides

awarding sentence of rigorous imprisonment for a period of 01 year and to pay compensation to the tune of Rs.10,00,000/- (cheque amount) and in default of payment, to further undergo simple imprisonment for six months, vide order dated 07.08.2019.

3. Aggrieved thereof, the petitioner filed first appeal before the Judge, Special Court-cum-Additional District & Sessions Judge-cum-Fast Track Court, Ferozepur, which was dismissed vide judgment dated 09.02.2023, thereby, upholding the judgment passed by the trial court.

4. While assailing the aforesaid judgments passed by both the Courts below, learned counsel for the petitioner submits that during the pendency of present revision petition, better sense has prevailed and the petitioner has discharged his liability towards respondent-Bank as the entire payment stands made and the respondent-Bank has already issued a "No Dues Certificate" dated 21.03.2022 (Annexure P-1).

5. In response, learned counsel for the respondent-complainant has filed reply by way of short affidavit on behalf of respondent-HDFC Bank Ltd. through Pulkit Khanna, Assistant Manager (Agri. Legal), HDFC Bank Ltd. Regional Office, Mohali, District Mohali in Court today and same is taken on record, wherein, it has been mentioned that all the claims between both the parties have been settled and the loan account of the petitioner has been closed and the respondent-Bank does not want to pursue the case against the petitioner besides it, the respondent-bank has no objection if the offence against the petitioner be compounded.

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 1881 Act, makes it clear that every offence punishable under 1881 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.*"

7.1 Applying the aforesaid proposition to the facts and circumstances of the present case, the petitioner having settled the dispute with the complainant by making the entire payment, offences committed by the petitioner under Section 138 of 1881 Act, thus, stand compounded.

7.2 Furthermore, following the law laid down by the Hon'ble Supreme Court in case of ***"B.V. Seshaiah Vs. 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.

7.3 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."*

8. Moreover, learned counsel for the petitioner, on instructions from his client, submits that he volunteers to serve public cause by providing the

ECG Machine to Civil Hospital, Ferozepur.

9. In view of the discussion made hereinabove and to give a quietus to the litigation, the present revision petition is accepted. Accordingly, the judgments of conviction and orders of sentence passed by both the courts below are hereby set aside, resulting in acquittal of the petitioner, however, subject to providing one ECG Machine to the Civil Hospital, Ferozepur, within a period of two weeks from today as volunteered by the petitioner against due receipt issued by the concerned Civil Surgeon, who shall prepare an inventory in this regard for its regular inspection by the Director concerned. A copy of the receipt shall also be sent to the office of Advocate General, Punjab at the earliest for maintaining records in this regard.

10. Pending application(s), if any stand(s) disposed of.

30.04.2024 **(HARKESH MANUJA)**
sonika **JUDGE**

whether speaking/reasoned: Yes/No
whether reportable: Yes/No