

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR No.2052 of 2019 (O&M)
Date of Decision: 16.02.2024

RAM SHARANPetitioner(s)

Vs
HEM RAJ GOYALRespondent(s)

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Abhinav Singla, Advocate
for the petitioner.

Mr. Sukhchain Singh Gill, Advocate
for the respondent.

HARKESH MANUJA, J. (Oral)

- [1]. Challenge in the present revision petition is to the judgment dated 17.07.2019 passed by the Additional Sessions Judge, Sangrur, whereby the appeal filed against the judgment of conviction and order of sentence dated 15.02.2017 passed by the Addl. Chief Judicial Magistrate, Sangrur, stood dismissed, thereby upholding the judgment of conviction and order of sentence passed by the Trial Court.
- [2]. On account of dishonor of two cheques for a total amount of Rs.90,000/-, a complaint under Section 138 of the NI Act read with Sections 420 & 193 IPC came to be filed at the instance of respondent-complainant against the petitioner. On the basis of the evidence recorded, learned Trial Court vide judgment/order dated 15.02.2017, convicted the petitioner under Section 138 of the NI Act and sentenced him to undergo rigorous imprisonment for a period of 01 year, besides fine of Rs.4,000/- and in default of payment of fine to further undergo

simple imprisonment for 30 days. The complainant was also awarded a sum of Rs.90,000/- as compensation under Section 357 Cr.P.C.

[3]. Aggrieved thereof, the petitioner filed first appeal before the court of Additional Sessions Judge, Sangrur, which was dismissed vide judgment dated 17.07.2019, thereby upholding the judgment of conviction and order of sentence dated 15.02.2017 passed by the Trial Court.

[4]. Impugning 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-complainant. Out of total outstanding amount of Rs.90,000/-, in terms of order dated 13.09.2019 passed by this Court, a demand draft in a sum of Rs.20,000/- was deposited with the Registrar (Judicial) of this Court by the petitioner on 18.09.2019, besides it another demand draft in a sum of Rs.80,000/- dated 12.02.2024 which includes the remaining cheque amount as well Rs.10,000/- as cost(s) of litigation has been handed over to learned counsel representing the respondent/complainant by learned counsel for the petitioner today in Court. The factum of compromise has even been admitted by the learned counsel representing respondent/complainant.

[5]. I have heard learned counsel for the parties and gone through the paper book.

[6]. 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.”*

Applying the aforesaid proposition to the facts and circumstances of the present case, the petitioner having settled the dispute with the respondent-complainant having made the entire payment, offence under Section 138 of the NI Act, thus, stands compounded. The aforesaid view is mainly derived from the proposition of law laid down by the Hon'ble Supreme Court in case of **“Ghanshyam Gautam and another vs. Usha Rani (since deceased) thr. LRs.,** passed in Criminal Appeal No.65 of 2024, SLP CrI. No.3289-2018, decided on 04.01.2024.

[7]. Furthermore, following the law laid down by the Hon'ble Supreme Court in case of **“B.V. Sessaiah 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 Courts below. Reference may be made to Paragraph Nos. 10 to 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]. In view of the discussion made hereinabove and to give a complete quietus to the litigation, the present revision petition is accepted. The petitioner having admittedly discharged his liability towards the cheque in question, the judgments of conviction and orders of sentence passed by both the Courts below are hereby set aside, resulting into acquittal of the petitioner. The demand draft for an amount of Rs.20,000/-deposited vide order dated 13.09.2019 be released in favour of the respondent/complainant upon due verification.

February 16, 2024
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(HARKESH MANUJA)
JUDGE

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