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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37384-2024
Date of Decision: 31.08.2024

Teja SinghPetitioner
Versus
State of Punjab and anotherRespondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr. Kunal R. Choksi, Advocate for
Mr. S.P.S. Khaira, Advocate for the petitioner.

Mr. Tarun Aggarwal, Sr. D.A.G., Punjab.

RAJESH BHARDWAJ, J.(ORAL)

1. Instant petition has been filed under Section 528 of B.N.S.S. 2023 praying for quashing of the complaint bearing No.NACT/71/2016 (Annexure P-1) Judgment of conviction and order of sentence dated 05.10.2019 passed by the Learned trial Court, Khamanon (Annexure P-2) and Judgment dated 10.07.2024 passed by the Appellate Court, Fatehgarh Sahib (Annexure P-3), P.S. Khamanon, District Fatehgarh Sahib and all the consequential proceedings arising therefrom on account of compromise arrived at between the parties by way of One Time Settlement Scheme (OTS) and for releasing the petitioner from judicial custody.
2. It has been submitted by learned counsel for the petitioner that petitioner was convicted under Section 138 of the NI Act and sentenced to undergo RI for a period of one year and further to pay compensation of Rs.1,26,5000/- under Section 357(3) Cr.P.C. by learned Sub Divisional Judicial Magistrate, Khamanon vide order dated 05.10.2019, and the same was affirmed by learned Additional Sessions Judge, Fatehgarh Sahib vide



order, dated 10.07.2024. However, now both the parties have amicably resolved their inter se dispute and an amount of Rs.3,26,000/- has been paid to the complainant (Receipt of the paid amount is annexed as Annexure P-4). He prays for compounding the offence and setting aside the orders dated 10.07.2024 passed by learned Additional Sessions Judge, Fatehgarh Sahib, and order, dated 05.10.2019 passed by SDJM, Khamanon.

3. Notice of motion.

4. On asking of the Court, Mr. Tarun Aggarwal, Sr. D.A.G., Punjab, accepts notice on behalf of the respondent-State whereas Mr. Dharminder Singh, Assistant Manager, The Fatehgarh Sahib Central Cooperative Bank Ltd. puts in appearance on behalf of respondent No.2 and affirms the factum of compromise and also suffered a statement before this Court regarding the compromise. He has also placed on record copy of his Identity card as well as Aadhar Card and has stated that he has no objection if the present petition is allowed, offence is compounded and orders, dated 05.10.2019 and 10.07.2024 are quashed.

5. The case as enumerated from the facts and circumstances is that a complaint under Section 138 of the NI Act was filed against the petitioner by respondent No.2 on the allegations that the petitioner/accused requested the complainant/Bank for personal loan and applied for a loan of Rs.2,30,000/- which was sanctioned to the petitioner on 19.04.2012 with terms and conditions that the accused will pay back the loan amount in monthly installments alongwith interest @ 15% P.A., which was to be charged on half yearly basis for 07 years with condition that any revision in the rate of interest shall be acceptable and binding upon the borrower and in



case of default of any installment, penal interest @ 2% over the normal rate of interest shall be charged on the defaulted amount. Thereafter, the petitioner took the loan from the complainant/Bank. The petitioner committed defaults in repayment of the scheduled amount and in order to discharge the part of the liability, due and outstanding against the petitioner, he issued a cheque bearing No.977204 dated 22.07.2016 amounting to Rs.1,26,500/-, which was dishonored by the Bank for want of insufficient funds vide its memo dated 27.07.2016. Legal notice dated 10.08.2016 was issued and served upon the petitioner. Despite the receipt of the legal notice, the petitioner did not clear the dues and hence, the complaint was filed.

6. On conclusion of trial, the petitioner was convicted and sentenced under Section 138 of the NI Act to undergo rigorous imprisonment for a period of one year. The petitioner was also burdened with compensation of Rs.1,26,500/- to be payable to the complainant. Aggrieved by the conviction and sentence awarded by learned Sub Divisional Judicial Magistrate, Khamanon, the petitioner assailed the same by way of filing an appeal before the learned Additional Sessions Judge, Fatehgarh Sahib. Learned Additional Sessions Judge, finding no merit in the appeal, dismissed the same on 10.07.2024 by upholding the conviction and sentence of the petitioner. Hence, the petitioner has approached this Court by way of filing the present petition challenging the above said orders.

7. Learned counsel for the petitioner has fairly submitted that after dismissal of the appeal, the matter has been compromised and the amount, as agreed in the compromise, has also been paid by the petitioner to the complainant and now nothing is due against him. He has further submitted



law settled, the petitioner be allowed to compound the offence and he be acquitted of the charge under Section 138 of NI Act. He has placed reliance on the law laid down by Hon'ble Supreme Court in '**Raj Reddy Kallem vs. The State of Haryana and another**', Law Finder Doc Id# 2557645, wherein, it has been held that there is no bar to seek the compounding of the offence at a later stage of criminal proceedings including after conviction.

8. Mr. Dharminder Singh, Assistant Manager, The Fatehgarh Sahib Central Cooperative Bank Ltd. appearing as representative of respondent No.2 has affirmed the contentions raised by learned counsel for the petitioner and has submitted that they have received the cheque amount as per the compromise and have no objection, if the present petition is allowed.

9. As the parties have compromised the matter and have buried the hatchet, no purpose would be served by punishing the petitioner, who has already honoured the terms of the compromise, which fact has been affirmed by the representative of respondent No.2/complainant. In **Raj Reddy Kallem's** case (supra), it has been held that the accused must try for compounding of the offence at the initial stages instead of later stages, however, there is no bar to seek the compounding of offence at later stage of criminal proceedings including after conviction.

10. So keeping in view above facts and the law settled by Hon'ble Supreme Court, the petitioner is allowed to compound the offence and he is ordered to be acquitted of the charges framed against him. As a consequences, the order dated 10.07.2024 passed by learned Additional Sessions Judge, Fatehgarh Sahib, and order dated 05.10.2019 passed by Sub



Divisional Judicial Magistrate, Khamanon, convicting and sentencing the petitioner under Section 138 of the NI Act, are set aside.

11. While taking into consideration the observations made by Hon’ble Supreme Court in ‘*Damodar S. Prabhu vs. Sayad Babalal H. 2010(2) RCR (Crl.) 851*’, the present petition is allowed subject to payment of costs of Rs.18,975/- (being 15% of the cheque amount of Rs.1,26,500/-), to be deposited with the Punjab and Haryana High Court Employees’ Welfare Association, within two months from today.

12. Petitioner is directed to file receipt/proof of payment of abovesaid amount of Rs.18,975/- in the office/Registry of this Court within aforesaid period. In case the petitioner fails to deposit the abovesaid amount within two months from today, the order, dated 10.07.2024, passed by learned Additional Sessions Judge, Fatehgarh Sahib, dismissing the appeal filed by the petitioner as well as order, dated 05.10.2019 passed by learned Sub Divisional Judicial Magistrate, Khamanon would become operational and the present petition would be deemed to have been dismissed.

13. Petitioner, if in custody, be set at liberty forthwith, if not required in any other case.

14. Present petition is allowed.

31.08.2024

ps-I

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

(RAJESH BHARDWAJ)
JUDGE