



238-2

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Criminal Revision No. 1294 of 2021 (O&M)
Date of Decision: 30.04.2024

Deepak Dhawan

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Udeyveer Singh Rana, Advocate
for the petitioner.

Mr. Gurmeet Singh, Assistant Advocate General, Haryana
for respondent No. 1.

Mr. Arjun Atri, Advocate
for respondent No. 2.

HARKESH MANUJA, J. (ORAL)

The petitioner, by way of present petition, seeks setting aside of the order dated 22.09.2021 passed by learned Additional Sessions Judge, Ambala, whereby the appeal filed by him against the judgment of conviction dated 03.06.2017 and order of sentence dated 08.06.2017 passed by the learned Judicial Magistrate Ist Class, Ambala, was dismissed.

[2] The petitioner was convicted in a criminal complaint No.1452 of 31.10.2015 / 07.12.2015, titled “Anoop Kumar Versus Deepak Dhawan”, under Section 138 of the Negotiable Instruments Act, 1881 (for short “the NI Act”), vide judgment dated 03.06.2017 and was sentenced vide order dated 08.06.2017 passed by learned Judicial Magistrate Ist Class, Ambala, to undergo simple imprisonment for a period of six months and to pay the cheques amount total amounting to Rs.1,96,200/- with interest at the rate of

9% from the filing of the complaint till its realization to respondent No. 2-complainant.

[3] Appeal preferred by the petitioner against the aforesaid judgment of conviction and order of sentence was also dismissed by the learned Additional Sessions Judge, Ambala on 22.09.2021. Hence, the present revision petition.

[4] At the outset, learned counsel for the petitioner submits that the matter has since been compromised and the settled amount has already been paid to respondent No. 2-complainant.

[5] Learned counsel for respondent No. 2, on instructions, does not dispute the aforesaid factual position, and submits that nothing is due, however, prays for releasing the amount in favour of respondent No. 2-complainant, as deposited by the petitioner in the Registry of this Court.

[6] Learned counsel for the petitioner has no objection in case the amount deposited by the petitioner be released in favour of respondent No. 2-complainant.

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

[8] A conjoint reading of Section 138 read with Section 147 of the NI Act, makes it clear that every offence punishable under the NI 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.”

[9] Applying the aforesaid proposition to the facts and circumstances of the present case, the petitioner having settled the dispute with respondent No. 2-complainant by making the entire payment, offences committed by the petitioner under Section 138 of the NI Act, thus, stand compounded.

[10] Furthermore, following the law laid down by the Hon'ble Supreme Court in case of ***“B. V. Seshaiiah Versus 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. 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."*

[11] Thus, in view of the aforesaid facts as well as keeping in mind the law laid down in the aforementioned judgments, the petition is **allowed** and the judgment of conviction and order of sentence (supra) passed by the Courts below are hereby set aside. The petitioner is hereby acquitted in the meaning of Section 320 (8) Cr.P.C.

[12] Registry is directed to release the amount in question to respondent No. 2-complainant forthwith.

[13] Pending miscellaneous application(s), if any, shall also stand disposed off.

April 30, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>