IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR No.2119 of 2022 (O&M)
Date of Decision: 06.05.2024

NAVRAJ KAUR .....Petitioner(s)

Vs

THE MAHIPUR PRIMARY CO-OP. AGRICULTURE DEVELOPMENT BANK LTD. MAHILPUR AND ANR ....Respondent(s)

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

Present: Mr. Ashish Pal Kaushal, Advocate for the petitioner.

Mr. Devender Kumar, Advocate for respondent No.1/Bank.

Mr. Siddharth Sandhu, Asstt. A.G., Punjab for respondent No.2.

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HARKESH MANUJA, J. (Oral)

[1]. Challenge in the present revision petition is to the judgment dated 29.08.2022 passed by the Additional Sessions Judge, Hoshiarpur, whereby the appeal filed against the judgment of conviction and order of sentence dated 08.08.2019 passed by the Judicial Magistrate Ist Class, Hoshiarpur stood dismissed, thereby upholding the judgment of conviction and order of sentence passed by the Trial Court.

[2]. On account of dishonor of cheque for a total amount of Rs.85000/-, a complaint under Section 138 of the Negotiable Instruments Act, 1881 came to be filed at the instance of respondent No.1/Bank-complainant against the petitioner. On the basis of evidence recorded, learned Trial Court vide judgment/order dated 08.08.2019, convicted the petitioner under Section 138 of the N.I. Act, 1881 and sentenced her to undergo rigorous imprisonment for a period of six months along

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with fine of Rs.1500/- and in default thereof, to further undergo simple imprisonment for a period of 10 days.

[3]. Aggrieved thereof, the petitioner filed first appeal before the court of Additional Sessions Judge, Hoshiarpur, which was dismissed vide judgment dated 29.08.2022, thereby upholding the judgment of conviction and order of sentence dated 08.08.2019 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 her entire liability towards respondent No.1/Bank-complainant and now nothing remains due as the entire payment against the cheque amount stands paid and also an amount of Rs.12,750/- being 15% of the cheque amount in question in terms of "***Damodar S. Prabhu vs. Sayed Babalal H." 2010(5) SCC 663*** through demand draft No.832851 dated 06.05.2023 has been deposited with the Secretary Legal Services Authority, Punjab and the said fact has also been noticed in the order dated 09.05.2023 passed by this Court. The factum of compromise has even been admitted by the learned counsel representing respondent No.1-Bank/complainant as such there is no outstanding balance against the petitioner.

[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:-

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> *"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 Crl. 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. 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 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:*
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> *'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*

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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.

[9]. All other pending applications, if any, shall stand disposed of accordingly.

(HARKESH MANUJA)
JUDGE

May 06, 2024
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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