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

CRR-1669-2024(O&M)

Date of Decision: September 04, 2024

Santokh Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Baljinder Singh, Advocate
for the petitioner.

.....

RAJESH BHARDWAJ, J.(ORAL)**CRM-35449-2024**

Instant application has been filed praying for condonation of delay of 1665 days' in filing the present revision petition.

It has been submitted by learned counsel for the applicant/petitioner that petitioner was convicted in another case and sentence of that matter is near to completion. It is further submitted that petitioner was under impression that he might have completed the sentence in this case also. But when he came on parole, it came to his knowledge that his sentence is still pending in this case, then he filed the present revision petition and effected compromise with the complainant and in this process, there occurred a delay of 1665 days, which is bona fide and unintentional and if the same is not condoned, the applicant/appellant would suffer an irreparable loss and injury.

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On asking of the Court, Mr.Tarun Aggarwal, Sr.DAG, Punjab, who is present in Court, accepts notice on behalf of the respondent/State whereas Mr.Aditya Sharma, Advocate, accepts notice on behalf of respondent No.2 and submits that the matter has been compromised and he has no objection if revision petition is allowed and offence is compounded.

After hearing the counsel for the parties and perusing the record, this Court finds that the delay occurred deserves to be condoned. Resultantly, the application is allowed and delay of 1665 days' in filing the appeal is condoned.

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1. Instant petition has been filed impugning the order, dated 01.12.2016, passed by learned Sub Divisional Judicial Magistrate, Rajpura, in Complaint No.COMA-676-2015, vide which the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act (for brevity, 'the Act') and sentenced to undergo rigorous imprisonment for a period of two years. Appeal filed against the order dated 01.12.2016, has also been dismissed by learned Additional Sessions Judge, Patiala, on 29.11.2017 under a misconception that petitioner has already undergone his punishment of two years.

2. It has been submitted by learned counsel for the petitioner that petitioner was convicted under Section 138 of the Act and sentenced to undergo RI for a period of two years. The appeal filed by the petitioner was dismissed by learned Appellate Court vide order, dated 29.11.2017 under a misconception that petitioner had already undergone his punishment of two

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dispute and the amount has also been paid to the complainant. He prays for compounding the offence and setting aside the order, dated 29.11.2017 passed by learned Additional Sessions Judge, Patiala, and order, dated 01.12.2016 passed by learned Sub Divisional Judicial Magistrate, Rajpura.

3. Notice of motion.

4. On asking of the Court, Mr.Tarun Aggarwal, Sr.DAG, Punjab, who is present in Court, accepts notice on behalf of the respondent/State whereas Mr.Aditya Sharma, Advocate, accepts notice on behalf of respondent No.2 and has affirmed the submissions made by learned counsel for the petitioner. He has further submitted that the agreed amount by way of compromise has already been paid by the petitioner and he has no objection if the orders, dated 01.02.2016 and 29.11.2017 are quashed.

5. The case as enumerated from the facts and circumstances is that a complaint under Section 138 of the Act was filed against the petitioner by the respondent on the allegations that the petitioner borrowed Rs.5,00,000/- from respondent No.2/complainant. The petitioner in discharge of his liability to pay loan issued cheque bearing No.0022772, dated 10.01.2008 for an amount of Rs.5,00,000/-, however, on presentation of the same, the said cheque was dishonoured with remarks 'insufficient balance'. Thereafter, respondent No.2/complainant sent a legal notice of demand, dated 19.02.2008 to the petitioner for making the payment of cheque amount but despite that the petitioner failed to make payment and thus, the complaint was filed.

6. On conclusion of trial, the petitioner was convicted and



sentenced under Section 138 of the Act to undergo rigorous imprisonment for a period of two years. Aggrieved by the conviction and sentence awarded by learned Sub Divisional Judicial Magistrate, Rajpura, the petitioner assailed the same by way of filing an appeal before the learned Appellate Court. However, as the parties made statement before the appellate Court that the petitioner had already served the sentence of two years and hence they did not challenge the conviction and as such learned Appellate Court dismissed the appeal on the basis of the statements made by learned counsel for the parties.

7. Learned counsel for the petitioner submits that the learned appellate Court dismissed the appeal only on the misconceived statements of counsel for both the parties, as it did not even ask for the custody certificate of the petitioner. Hence, the petitioner has approached this Court by way of filing the present revision petition challenging the above said orders. He has 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 the petitioner. He has further submitted that once the parties have settled the dispute amicably, then in view of the law settled, the petitioner be allowed to compound the offence and he be acquitted of the charges framed under Section 138 of 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 later stage of criminal proceedings including after conviction.

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8. Learned counsel for respondent No.2 has affirmed the contentions raised by learned counsel for the petitioner and has submitted that respondent No.2/complainant has received the settled amount as per the compromise and he has 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 and has returned the money, as agreed, which fact has been affirmed by learned counsel for 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 29.11.2017 passed by learned Additional Sessions Judge, Patiala, and order dated 01.12.2016 passed by Sub Divisional Judicial Magistrate, Rajpura, Panipat, convicting and sentencing the petitioner under Section 138 of the 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 (Cr1.) 851**, the present revision petition is allowed subject to payment of costs of Rs.75,000/- (being 15% of the cheque amount of Rs.5,00,000/-) to the complainant within a period of two months from today.

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Rs.75,000/- in the Court of Sub Divisional Judicial Magistrate, Rajpura, within aforesaid period and on his doing so, the Court concerned will issue notice to the complainant and on his appearance, the said amount shall be released to respondent No.2/complainant forthwith. In case the petitioner fails to deposit the abovesaid amount within two months from today, the order dated 29.11.2017, passed by learned Additional Sessions Judge, Patiala, dismissing the appeal filed by the petitioner as well as order, dated 01.12.2016 passed by learned Sub Divisional Judicial Magistrate, Rajpura, 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.

September 04, 2024

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(RAJESH BHARDWAJ)**JUDGE****1. Whether speaking/reasoned ?****Yes/No****2. Whether reportable ?****Yes/No**