IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-53603-2023
in /and CRR-2151-2023 (O & M)
Date of decision: 04.01.2024

Harbhinder Singh .... Petitioner

V/s

Mahindra and Mahindra Financial Services Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Piyush Setia, Advocate, for the petitioner.

Mr. Vishal Singh, Advocate,
for Himendra Pal Singh, Advocate,
for the respondent.

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JASJIT SINGH BEDI, J. (Oral)

The present revision petition has been filed against the order dated 18.07.2023 passed by the Sessions Judge, Fazilka, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 23.02.2023 passed by the Judicial Magistrate 1st Class, Abohar, has been dismissed.

2. The brief facts of the case are that the accused-petitioner approached the complainant for financing a vehicle make Hundai *i20* Asta CRDI for personal necessity. After understanding all the terms and conditions, the accused executed an agreement No.1514310 dated 25.03.2011 in favour of the complainant company and a loan amount of Rs.5,60,000/- was advanced to the accused. The accused promised to repay

the loan of Rs.8,82,800/- along with incidental interest and other charges thereof in 60 easy monthly instalments as per the aforesaid agreement. After advancement of the loan, the accused-petitioner had violated the terms and conditions of the agreement by defaulting in paying the instalments. When the officer of the company approached the accused-petitioner for payment of balance loan amount, the petitioner in discharge of his legal liability issued a cheque bearing No.367002 dated 04.06.2018 for a sum of Rs.15,82,107 drawn on Punjab National Bank, Branch Ghallu under his account No.1924000100074400 and assured that the same would be honoured on its presentation in the bank. On presentation of the aforesaid cheque for encashment, the same was received back unpaid vide memo dated 12.06.2018 with the remarks “Funds Insufficient”. The accused-petitioner was served with a legal notice dated 02.07.2018 within time but he failed to make the payment, leading to initiation of proceedings under Section 138 of the Negotiable Instruments Act.

3. In the complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the complainant-company, the petitioner-accused was summoned to face the trial. The evidence was led and ultimately, accused-petitioner was held guilty and accordingly, convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to undergo rigorous imprisonment for a period of two years and it was also ordered that the accused will pay compensation of Rs.15,82,107/- under Section 357(3) of the Cr.P.C. to be paid to the complainant and in failure of payment of the compensation, to further undergo simple imprisonment for a period of 03 months.

4. That aggrieved against the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Sessions Judge, Fazilka, which came to be dismissed on 18.07.2023.

5. Still aggrieved, the present revision petition has been preferred by the petitioner. During the pendency of the present criminal revision, an application (CRM-53603-2023) under Section 320(6) read with Section 147 of the Negotiable Instruments Act read with Section 482 Cr.P.C. has been filed for permitting the compounding of the offences under Section 138 of the Negotiable Instruments Act as the parties have amicably settled the dispute.

6. The learned counsel for the petitioner contends that in terms of a settlement arrived at between the parties, the accused-petitioner has paid a sum of Rs.5,50,000/- to the respondent-complainant on 14.12.2023 vide receipts (Annexure A-1) as full and final settlement against the petitioner and nothing remains due and recoverable by the complainant-respondent as is evident from Statement of Accounts (Annexure A-2). It would be relevant to mention here that a reading of Section 147 of the Negotiable Instruments Act read with Section 320 Cr.P.C. would show that where a settlement has been effected, the offence under Section 138 of the Negotiable Instruments Act can be compounded on account of the fact that a mutual compromise has been effected between the parties.

6. The learned counsel for respondent submits that as the matter has been settled between the parties, he has no objection if the prayer made in the application for compounding the offence under Section 138 N.I. Act is allowed and the petitioner is acquitted of the charges framed against him.

7. I have heard the learned counsel for both the parties.

8. This Hon'ble Court in <u>'Ramesh Chander Vs. State of Haryana and another, 2007(1) RCR (Criminal) 245'</u> held as under:-

> *"4. As per the provisions of Section 147 of the Act, the offence under Section 138 is compoundable. Section 147 reads as under:*
>
> *"Offence to be compoundable-*
>
> *Notwithstanding anything contained in the Criminal Procedure Code, 1973(2 of 1974), every offence punishable under this Act shall be compoundable".*
>
> *5. The compounding of the offence under Section 138 can be done during the trial of the case as well as by the High Court or Court of Session while acting in the exercise of its power of revision under Section 401 Criminal Procedure Code Reference may be made to Section 320(6) Criminal Procedure Code in this regard.*
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> *6. Further, under Section 320(8) Criminal Procedure Code the composition of an offence shall have the effect of acquittal of the accused with whom the offence has been compounded."*

9. This Court in 'Vatsa Electronics Vs. Pala Ram & Anr. decided on 09.03.2022 in CRR-1585-2019' has also held that once a settlement is being effected, then in terms of Section 147 of the Negotiable Instruments Act and Section 320 Cr.P.C., the accused ought to be acquitted as the offence stands compounded.

10. In view of the above, since, the parties have voluntarily settled the disputes between themselves, it is a fit case for allowing them to compound the offence.

11. Accordingly, the revision petition is allowed and the order dated dated 18.07.2023 passed by the Sessions Judge, Fazilka, as well as the

judgment of conviction and order of sentence dated 23.02.2023 passed by the Judicial Magistrate 1st Class, Abohar, are hereby set aside. The petitioner is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

12. The petitioner is ordered to be released forthwith in case he is not required in any other case.

13. Since the main petition has been disposed of no order needs to be passed in the pending application(s), if any,

(JASJIT SINGH BEDI)
JUDGE

January 04, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No