



**CRM-32393-2019 in/and
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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CRM-32393-2019 in/and
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Date of decision: 2nd September, 2024

Rajesh Kumar

...Petitioner

Versus

Rakesh

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Petitioner-in person with
Mr. Prashant Sethi, Advocate for the petitioner.

Respondent-in person with
Mr. Sumit Sharma, Advocate for
Mr. U.M. Khan, Advocate for the respondent.

MANISHA BATRA, J (ORAL):-

The instant revision petition has arisen from a criminal complaint bearing No. RBT-1425 of 2017 titled as 'Rakesh Vs. Rajesh Kumar' filed under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') that had been filed by the complainant (to be mentioned as respondent henceforth) alleging therein that he had entered into a partnership with the accused Rajesh Kumar (to be mentioned as petitioner) and one Devender for running business of sale and purchase of property in Noida. They had played fraud with him compelling him to lodge a complaint against them. Subsequently, a compromise had taken place between them, as per which. the present petitioner and co-accused had agreed to make payment of an amount of Rs. 20,00,000/- to him. The petitioner had issued



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two cheques in his favour. One of the said cheques which was for a sum of Rs. 5,00,000/- had been presented before his banker but the same was dishonoured with the remarks 'funds insufficient'. After sending statutory notice, the respondent filed the aforementioned complaint. The petitioner was summoned as an accused in the said complaint. The learned trial Court vide order dated 14.11.2018 had held the petitioner guilty for commission of offence punishable under Section 138 of NI Act and he was sentenced to undergo simple imprisonment for a period of six months and to pay compensation of Rs. 7,50,000/-. The petitioner challenged his conviction before the Appellate Court and vide judgment dated 04.10.2019 the findings given by the trial Court were upheld.

3. Feeling aggrieved, the petitioner has filed this revision petition. Along with the revision petition, he has filed an application bearing CRM No. 32393 of 2019 for compounding the offence for which he has been held guilty and convicted.

4. It is argued by learned counsel for the petitioner that a compromise had been arrived at between the respondent and himself on 04.10.2019. Memorandum of compromise (Annexure A-1) was executed between the parties. The entire disputed amount including the amount of cheque in question has been given by the petitioner to the respondent. It is submitted that the respondent also admits the factum of the above stated compromise having been arrived between the parties and about receipt of entire disputed amount and therefore, he deserves to be granted permission to compound the offence.



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5. Today the respondent has appeared in-person along with his counsel. It is affirmed by him that the compromise (Annexure A-1) was voluntarily executed by him on 04.10.2019. He has also submitted that the amount of cheque in question as well as other cheques which have been issued by the petitioner, stands paid to him. He has stated in the Court that he has no objection, if the offence under Section 138 of NI Act stands compounded in favour of the petitioner and the judgment of conviction and order of sentence recorded by learned trial Court and affirmed by learned Appellate Court are quashed and set aside.

6. Section 147 of NI Act makes all offences under the NI Act as compoundable offences. It is well settled proposition of law by now that in view of the provisions contained under this Section read with Section 320 of Cr.P.C., a compromise arrived *inter se* the parties can be accepted and the offence committed under Section 138 of NI Act, can be ordered to be compounded even after conviction. Reference in this regard can be made to the judgment dated 02.03.2022 pronounced by the High Court of Himachal Pradesh in Criminal Misc. (main) petition No. 107 of 2022 under Section 482 of Cr.P.C. titled as '**Hiranand Shastri Vs. Ram Rattan Thakur and another**', wherein it was observed that the judgment of conviction recorded under Section 138 of NI Act can be recalled, in view of the specific provisions contained under Section 147 of the Act, which provide for compounding of offence allegedly committed under Section 138 of NI Act. Similar proposition of law was laid down in the judgment dated 21.12.2021 in **CRM-M-No. 2499-2021 in Geeta Devi Vs. Surinder Singh and another**,



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wherein it was observed by the High Court of Himachal Pradesh that the Court has ample powers under Section 147 of NI Act to compound the offence in those cases, where the accused already stands convicted.

7. In *Damodar S. Prabhu Vs. Sayed babalal H. 2010(2) RCR (Criminal) 851*, the Hon'ble Supreme Court had laid down several guidelines with regard to the proceedings conducted in connection with complaints filed under Section 138 of NI Act. It was observed that the interest of the complainant lied primarily in recovering the money rather than seeing the drawer of the cheque in jail. with respect to the offence of dishonor of the cheque and it is compensatory aspect of the remedy which should be given priority over the punitive aspect.

8. In *Raj Reddy Kallen Vs. State of Haryana and another (2024) 5 SCR 203*, it was observed by Hon'ble Supreme Court that keeping in mind that 'compensatory aspect,' of remedy shall have priority over the 'punitive aspect', courts should encourage compounding of offences under the NI Act, if the parties are willing to do so.

9. In the instant case, as discussed above, the parties have entered into a compromise, terms of which have been reduced into writing way back in the year 2019. Copy of the same has been produced on record as Annexure A-1. This compromise was effected after passing of judgment dated 04.10.2019 by the Appellate Court. The respondent-complainant has affirmed the factum of this compromise and has given his no objection, if this petition is allowed. The veracity of Annexure A-1 as such stands established in view of the statement so made by the respondent before this



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Court today. There is no doubt that the petitioner and the respondent have reached at a settlement permissible by law. This Court has also satisfied itself regarding the genuineness of the compromise Annexure A-1. As such, in the considered opinion of this Court, the conviction of the petitioner would not serve any purpose and is required to be set aside. In the light of the judicial precedents as referred above, the terms of the compromise and the other factors peculiar to the case, the contents of the memorandum of compromise point towards its acceptance. As such, this Court is of the considered opinion that the applicaiton filed by the petitioner for granting permission to compound the subject offence deserves to be allowed. Consequently, the complaint No. RBT-1425 of 2017 titled as ‘Rakesh Vs. Rajesh Kumar’ judgment of conviction and order of quantum of sentence dated 14.11.2018 as passed by the learned trial Magistrate as well as the judgment dated 04.10.2019 passed in criminal appeal No. 390 of 2018 by the learned Sessions Judge, Faridkot are set aside. The offence for which the petitioner was convicted stands compounded and the petitioner is acquitted on account of such compounding.

10. Since the main petition has been disposed of, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

2nd September, 2024

Parveen Sharma	1. Whether speaking/ reasoned	:	Yes
	2. Whether reportable	:	Yes