108+246

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 2703 of 2023 (O&M)
Date of Decision: 14.05.2024

Sarmail Singh

.... Petitioner

Versus

State Bank of India and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Natasha Munjal, Advocate
for the petitioner.

Mr. Rajiv Sharma (Hisarwale), Advocate
for respondent No. 1-State Bank of India.

Mr. Athar Ahmad, Deputy Advocate General, Punjab
for respondent No. 2.

****

HARKESH MANUJA, J. (ORAL)

CRMs-21100 & 21101-2024

Prayer in the present applications moved on behalf of the applicant-respondent No. 1-Bank, are for placing on record the reply as well as Annexure R-1 and also exemption from filing the certified copy of the documents/annexure.

Applications are **allowed**, as prayed for, subject to all just exceptions. The reply alongwith its Annexure R-1 is taken on record and exemption from filing the certified copy of the said annexure is also granted. Copy of the above reply alongwith its annexure be supplied to the counsel opposite.

Registry to do the needful.

MAIN CASE

The petitioner, by way of present petitions, seeks setting aside of the order dated 21.09.2023 passed by learned Sessions Judge, Ferozepur, whereby the appeal filed by him against the judgment of conviction and order of sentence dated 05.05.2023 passed by the learned Judicial Magistrate Ist Class, Zira, was dismissed.

[2] The petitioner was convicted in a criminal complaint case No. RBT 189 dated 16.03.2019, titled *"State Bank of India Versus Sarmail Singh"*, under Section 138 of the Negotiable Instruments Act, 1881 **(for short "the NI Act")**, vide judgment dated 05.05.2023 and was sentenced vide order of even date passed by learned Judicial Magistrate Ist Class, Zira, to undergo simple imprisonment for a period of one year and to pay compensation double of the cheque amount.

[3] Appeal preferred by the petitioner against the aforesaid judgment of conviction and order of sentence was also dismissed by the learned Sessions Judge, Ferozepur on 21.09.2023. 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 of Rs. 3,64,287/-, under SBI Rinn Samadhan Scheme 2023-24, has already been paid to respondent No.1-complainant, hence, the continuation of proceedings against the petitioner would be a futile exercise and thus, not justified. Learned counsel has also placed on record No Objection Certificate issued by the respondent-Bank in favour of petitioner, annexed as **Annexure P-5**.

[5] Learned counsel for respondent-Bank, on instructions, vehemently opposes the prayer made on behalf of the petitioner. He, however, does not dispute the aforesaid No Objection Certificate (P-5) issued by respondent No. 1-Bank, wherein it is mentioned that no further dues are pending against the petitioner.

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

[7] 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."*

[8] Applying the aforesaid proposition to the facts and circumstances of the present case, the petitioner having settled the dispute with the respondent-Bank/complainant by making the entire payment, offence committed by the petitioner under Section 138 of the NI Act, thus, stand compounded.

[9] Furthermore, following the law laid down by the Hon'ble Supreme Court in case of ***"B.V. Seshaiah 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."*

[10] Thus, in view of the aforesaid facts as well as keeping in mind the law laid down in the aforementioned judgment, 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.

[11] The aforesaid order shall, however, be subject to payment of costs of Rs. 5,000/- to be deposited by the petitioner with the Nishkam Sewa Group (for Charitable Work), run by Punjab & Haryana High Court Lawyers at Chandigarh, within a period of one week from the date of receipt of certified copy of this order.

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

May 14, 2024 **(HARKESH MANUJA)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*