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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR- 2850-2023 (O&M)
Date of Decision : 12.03.2024

Jaswinder Singh

....Petitioners

VERSUS

State of Punjab and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Abhishek Lubana, Advocate for the petitioner.

Mr. Neeraj Madan, Sr. DAG, Punjab.

Mr. Rajesh Kumar, Advocate for respondent No.2.

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SUDEEPTI SHARMA, J. (Oral)

1. On 12.12.2023, this Court passed the following order:-

"CRM-52219-2023

Application for placing on record copy of compromise deed and affidavit of complainant/respondent No.2 as Annexures P-1 & P-2 respectively.

Allowed as prayed for subject to all just exceptions. Annexures P-1 & P-2 are taken on record. Registry to tag the same at appropriate place.

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Contends, inter alia, that matter has been compromised between the parties.

(2) *Notice of motion.*

- (3) *Mr. Joginder Pal Ratra, Sr. DAG, Punjab, accepts notice on behalf of respondent No.1-State.*
- (4) *Mr. Rajesh Kumar, Advocate, causes representation on behalf of respondent No.2 and acknowledged the factum of compromise between the parties.*
- (5) *Requisite number of copies of the petition be supplied to learned Counsel for the respondents during the course of day.*
- (6) *Petitioner shall file his affidavit that there is no other criminal case(s) pending against him and also give the details of any other FIR(s), already quashed on the basis of compromise.*
- (7) *In view of the above, let parties appear before the Court of learned Illaqa Magistrate/trial Court on or before 24.01.2024 for recording their statement(s) with reference to the compromise, if any, entered into between them.*
- (8) *Learned Illaqa Magistrate/trial Court shall record the statement(s) of all accused, complainant/injured and victim, if any, and submit a report to this Court before the next date of hearing containing the following information:-*
- (i) *Whether the statements of the parties are bona fide and not result of any pressure or coercion etc. in any manner?*
- (ii) *Whether the compromise effected between the parties is genuine and valid?*

(iii) Whether all the accused, complainant and injured are party to the compromise and if not, the details/particulars of such person(s)?

(iv) Whether any other case is pending against either of the parties or not, if yes, the details thereof?

(v) Whether any of the persons involved in this case/dispute has been declared a proclaimed offender?

(vi) Whether any of the petitioner(s) is/are previous convict or not?

(9) List before this Court on 12.03.2024 for further consideration.

(10) Till the next date of hearing, sentence imposed upon the petitioner shall remain stayed.

(11) Meanwhile, learned State Counsel shall also get the instructions in the matter as to whether the State has any objection?

(12) Copy of this order be sent to learned Judicial Officer concerned forthwith for information and strict compliance.

2. In compliance of order dated 12.12.2023, a report has been received from Judicial Magistrate Ist Class, Abohar, which is reproduced as under:-

“ In accordance with the directions of Hon’ble Punjab and Haryana High Court in afore cited criminal Misc. petition the undersigned has taken up the papers of case titled as Madav Vs. jaswinder Singh, CRM-95-2023 under Section 138 of NI Act, on dated 22.12.2023 for recording the statements of parties qua alleged compromise. The said case was filed by the complainant Madav against accused namely Jaswinder Singh for dishonour of cheque.

2. *The complainant Madhav vide his separate statement as recorded before the Court has stated that a complaint under Section 138 of NI Act was filed by him against accused Jaswinder Singh. However, he has compromised with accused named above with his free will and without any pressure. Now the complainant Madhav has no objection if accused named above who has filed the above said petition is acquitted/discharged and the petition filed by him is accepted by the Hon'ble Punjab and Haryana High Court. On the other hand, accused Jaswinder Singh vide his separate statement as recorded before the Court, have admitted the statement of the complainant to be correct and stated that petition may kindly be accepted. The complainant Madhav has been identified by his counsel Sh. Amritpal Singh Tinna, Advocate while accused has been identified by his counsel Sh. Ravi Kumar, Advocate. Besides, they have also placed on record their respective ID cards and also placed on record copy of compromise deed as Ex.CX and copy of affidavit of complainant as Ex.CY.*

3. *In the said back ground keeping in view the statements so suffered by the complainant as well as accused, it seems that the compromise so effected between the parties is genuine, voluntary and without any coercion or undue influence and the statements of the parties are bona fide and no result of any pressure or coercion etc. in any manner and further only accused and complainant are the parties to the above said complainant and to compromise. It is worthwhile to mention here that the present case is complainant under Negotiable*

Instrument Act and there is no injured person in this case. No other case is pending against either of the parties. No person of the above said complaint is declared proclaimed offender as stated by the parties in their respective statements and petitioner/accused is not the previous convict except in the above said complaint. Hence this report.”

3. Hon’ble Supreme Court of India in **B.V. Sessaish Vs. The State of Telangana & Anr.** [2023(1) R.C.R (Criminal) 831] has held as under:-

“8. In our view, the terms and conditions of the settlement entered into by the parties binds them to settle the dispute amicably, or through an arbitration as has been stated in clause 8 of the Memorandum of Understanding.

9. In such a circumstance, the Appellants cannot be convicted on the basis of the orders passed by the courts below, as the settlement is nothing but a compounding of the offence.

10. In the case of M/S Meters and Instruments Private Limited & Anr. v. Kanchan Mehta 2018 (1) SCC 560, 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. Dishonor of

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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."

4. In view of above, order dated 03.10.2023 passed by the learned Sessions Judge, Fazilka and judgment and order of sentence dated 23.01.2023 passed by the learned Judicial Magistrate, First Class Abohar, Fazilka, are set aside.

5. The present revision petition is accordingly allowed. Pending applications, if any, also stand disposed off.

March 12, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No