
(2021) 03 P&H CK 0368

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 205 Of 2021 (O&M)

Jagmohan

APPELLANT

Vs

Sandeep Aggarwal And Another

RESPONDENT

Date of Decision : 19-03-2021

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 147
Constitution Of India, 1950 — Article 142

Citation : (2021) 03 P&H CK 0368

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Kunal Dawar, Jagjot Singh, Dhruv Sheoran

Final Decision : Allowed

Judgement

Amol Rattan Singh, J

Case heard via video conferencing.

By this revision petition, the petitioner seeks setting aside of the judgment and order of sentence dated 10.05.2019 and 13.05.2019 respectively, passed by the learned JMIC, Faridabad, as also the judgment passed by the learned Sessions Judge, Faridabad, dated 11.02.2021.

On 26.02.2021, the following order had been passed by this court, upon an application bearing CRM no.5846 of 2021 having been filed on behalf of the petitioner:-

"Case heard via video conferencing.

At the outset, learned counsel for the applicant-petitioner draws attention of this court to CRM-5846-2021, which is an application seeking that the offence may be allowed to be compounded even after conviction of the applicant-petitioner, in terms of Section 147 of the Negotiable Instruments Act, 1881, with the matter having been settled vide the settlement/compromise deed dated 19.02.2021

(copy Annexure P-1).

Notice of motion.

On the asking of the court, Mr. B.S. Virk, D.A.G., Haryana, accepts notice on behalf of respondent no. 2, with Mr. Jagjot Singh, Advocate, appearing and accepting notice on behalf of respondent no. 1.

He submits that he has a power of attorney executed in his favour which he would be filing in the Registry, a copy of which he has sent to the Reader of this court via 'Whatsapp communication'.

Learned counsel appearing for respondent no. 1 admits to the compromise and submits that the respondent-complainant has no objection to the offence being compounded in terms thereof.

Both learned counsel also further draw attention to the affidavit Annexure P-2, of the respondent-complainant Sandeep Aggarwal, which however, though is seen to be attested by the learned Notary Public on 19.02.2021, is actually not seen to be dated and in fact even the verification clause simply shows it to be "verified at Faridabad on_____".

Hence, it is actually not a valid affidavit, which should not have been attested by the Notary Public.

That being so, the offence in my opinion cannot be compounded today.

However, in view of the statement made by counsel for the complainant and the agreement itself, which shows that a demand draft for an amount of Rs. 5,00,000/- and cash for an amount of Rs. 2,00,000/- were received by the complainant and that the settlement arrived at was for payment of Rs. 7,00,000/-, CRM-5846-2021 is allowed, with the sentence of the petitioner ordered to be suspended, on his furnishing adequate bail bonds and surety bonds to the satisfaction of the learned CJM/trial court/Duty Magistrate concerned, during the pendency of this petition.

Adjourned to 19.03.2021.

In the meanwhile, the petitioner as also respondent no. 1 would appear before the learned trial court/Area Magistrate upto 08.03.2021 to record their statements in terms of the compromise reached, with that court to send its report as regards the authenticity thereof, annexing therewith the statements of the parties.

To be shown in the urgent motion list."

Pursuant to the aforesaid order, a report of the learned JMIC, Faridabad, dated 02.03.2021 has been received, stating therein that the petitioner as also the complainant, i.e. respondent no.1, Sandeep Aggarwal, appeared before that court and suffered statements to the effect that the matter has been settled between them and the entire amount as per the settlement, has been received

by the complainant.

It has also been stated by the learned JMIC that on a specific query put to the complainant, he stated that the compromise has been arrived at voluntarily between the parties, with the opinion of that court also being that it is indeed a voluntary settlement.

That being so, with learned counsel appearing for the respondent complainant again reiterating today that the matter has indeed been voluntarily settled between the parties, and the offence being one which is compoundable in any case in terms of Section 147 of the Negotiable Instruments Act, 1881, even though the petitioner has been convicted for the commission of an offence punishable under Section 138 thereof, the matter can be compounded at any stage and consequently the petition is allowed, with the judgments of the courts below convicting the petitioner for the commission of the aforesaid offence and sentencing him to simple imprisonment for a period of 9 months, as also awarding Rs.12,00,000/- to the complainant, are set aside.

Learned counsel for the petitioner also cites two orders of the Supreme Court in *A.T. Sivaperumal v. Mohammed Hyath (D)* by Lrs. 2017(2) RCR (Criminal) 453 and *A. J. Asana v. Sittrarasu* 2019 (5) RCR (Criminal) 568, in support of his contention that the complaint can be quashed at any stage, i.e. even after conviction of the accused, if the complainant and he wish to have the offence compounded on the basis of any compromise reached between them.

In that context, it is to be noticed that the aforesaid orders of the Supreme Court may actually have been issued in exercise of the jurisdiction of the Apex Court under Article 142 of the Constitution of India and therefore would not be lying down any ratio on the point in issue; but nevertheless, the offence being a compoundable one as per Section 147 of the Act of 1881 and the accused and the complainant, i.e. the petitioner and the respondent herein, having actually settled the matter amicably amongst them, there would be no reason for not allowing the petition as has been done hereinabove.