

(2008) 02 P&amp;H CK 0356

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Revision Appeal No. 51 of 2008

Gurmeet Singh

APPELLANT

Vs

Raj Kumar and Another

RESPONDENT

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**Date of Decision:** Feb. 11, 2008**Acts Referred:**

- Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** (2008) 2 CivCC 144 : (2008) 24 CriminalCC 75**Hon'ble Judges:** Rajesh Bindal, J**Bench:** Single Bench**Advocate:** Deepak Arora, for the Appellant; Ashutosh Bajpai, for the Respondent

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**Judgement**

Rajesh Bindal, J.

The petitioner has filed the present petition challenging the judgments passed by the Courts below whereby he has been convicted for the offence committed u/s 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.2,000/

2. Learned counsel for the petitioner submitted that matter has been compromised with the complainant and in terms thereof he had given a demand draft of Rs.20,000/- to the complainant on the last date of hearing i.e. February 01, 2008, which was accepted by the counsel for the complainant, who has not disputed the factum of the matter having been compromised between the parties. However, he submitted that as complainant had to suffer a long agony before he had been able to receive payment from the accused, he may be suitably compensated. Learned counsel for the petitioner submitted that petitioner is a poor person and he will further pay a sum of Rs.2,000/- as damages, which was acceptable to the counsel for the complainant. Learned counsel for the petitioner further submitted that as the matter between the parties had been compromised, the conviction and sentence of the petitioner may be set aside.

3. Reliance has been placed upon Vinay Devanna Nayak vs. Ryot Seva Sahakari Bank Ltd., 2008(1) CCC 268 (S. C.) : 2008(1) CCC 229 (S.C.) : 2008(1) ACJ 052 (S.C.) : 2007(5) LH (SC) 3843, wherein Hon"ble the Supreme Court opined as under: (CCC p.271)

"17. As observed by this Court in [M/s. Electronics Trade and Technology Developement Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers \(Electronics\) Pvt. Ltd. and another](#), , the object of bringing Section 138 in the statute book is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied, Presumably, Parliament also realized this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002). The said section reads thus:

"S. 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."

18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.

19. For the foregoing reasons the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him."

4. As the dispute between the parties has been compromised, the amount of cheque for non clearance of which, the petitioner was convicted and sentenced has already been paid to the complainant and in addition thereof a sum of Rs.2,000/- as damaged have also been paid, accordingly the conviction and sentence awarded to the petitioner is set aside. The judgments of both the Courts below are set aside.

5. The petition is disposed of.