

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM-M No. 30919 of 2013(O&M)

Date of Decision 12.01.2015

Vikas Raheja

..Petitioner

Versus

Parmod Kumar

..Respondent

CORAM: HON'BLE MR.JUSTICE M.M.S BEDI

Present: Mr. Vikram Chaudhary, Sr. Advocate with
Ms. Isha Goyal, Advocate for the petitioner.

Mr. Raman Sharma, Advocate,
for the respondent.

M.M.S.BEDI, J. (ORAL)

Petitioner is facing proceedings under Section 138 of the Negotiable Instruments Act regarding a cheque of Rs.20,000/- which was issued by the petitioner but was dishonored. In addition to the amount of cheque, the petitioner has offered a sum of Rs.5,000/- as interest and another sum of Rs. 5,000/- as additional cost by way of compensation as per the judgment of Apex Court in **Damodar S. Prabhu Vs. Sayed Babalal H. 2010 (2) RCR (Criminal) 851.**

On notice having been issued to the complainant, counsel has put in appearance to submit that the cheque had been issued in favour of complainant by the petitioner against a bank account which was not in the

name of the petitioner. In view of unnecessary harassment caused, the complainant intends to continue with the proceedings under Section 138 of the Negotiable Instruments Act.

I have heard learned counsel for the petitioner and learned counsel for the respondent and considered the offer of the petitioner for compounding and the reluctance of the complainant to compound the offence.

Learned counsel for the petitioner has also brought to the notice of the Court that on receipt of notice under Section 138 of the Negotiable Instruments Act and on the first date of hearing on receipt of notice from the Court the amount of cheque was offered but the complainant opted to avoid the receipt of money with sole objective to get extra money.

Counsel for the complainant stated that the complainant does not want to compound the offence and wants to prosecute the petitioner as he has been compelled to do so.

In this context, a reference can now be made to a recent judgment of Apex Court in **Indian Bank Association and others Vs. Union of India and others 2014 (2) RCR (Criminal) 598** which has laid down certain guidelines. It has been observed in the said judgment that the objectives of the proceedings of Section 138 of the Act are that the cheques should not be used by person as a tool of dishonesty and when cheque is issued by a person, it must be honoured and if it is not honoured, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still does not pay, he must face the criminal trial and consequences.

The directions issued by the Apex Court to criminal courts all over country in this respect read as follows:

“(i) Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

(ii) MM/JM should adopt a pragmatic and realistic approach while issuing summons- Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant- Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused- For notice of appearance a short date be fixed- If the summons is received back un-served, immediate follow up action be taken.

(iii) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

(iv) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145 (2) for re-calling a witness for cross-examination.

(v) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case- The Court has option of accepting affidavits of the witnesses, instead of examining them in Court- Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.”

As per para (iii) above that Court should indicate in the summon that if the accused makes an application for compounding for offences at the first hearing of the case and if such an application is made, Court may pass appropriate orders at the earliest. The spirit of the order passed in Indian Bank Association' case (supra) is an offer for compounding at the earliest should be permitted in case the amount is offered.

The Supreme Court in its earlier judgment in Damodar S. Prabhu's case (supra) had also held that compounding of offence under Section 138 of the Negotiable Instruments Act should be permitted by paying additional amount in case the accused pays 10 percent of the cheque amount as cost of compounding in the trial Court. Cost of compounding would be 15 percent in the High Court and 20 percent in the Supreme Court.

Taking into consideration the offer of the petitioner, I deem it appropriate to dispose of the petition with a direction that petitioner will deposit a sum of Rs.35,000/- with the trial Court on the next date of hearing, which would include Rs.20,000/- as the amount of the cheque and Rs.3,000/- as 15 percent of the amount of the cheque. The remaining amount of Rs.12,000/- will be deemed to be the cost of unnecessary harassment caused to the complainant.

It will be open to the complainant to receive the said amount or to refuse the same. It is ordered that in case the complainant refuses to accept the said amount as compounding amount, the trial Court shall exempt the personal appearance of the petitioner and permit the continuation of proceedings. It will be open to the trial Court to record the evidence as per the provisions of Section 273 Cr.P.C in presence of the counsel for the petitioner. Trial would be concluded within a period of six months. In the

eventuality of the compounding amount being accepted by the complainant, the trial Court shall dispose of the proceedings as compounded.

The petition is disposed of without prejudice to the right of the petitioner to approach this Court again.

12.01.2015

harsha

(M.M.S. BEDI)
JUDGE