

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-527-2006 (O&M)

Date of decision : 23.12.2015

Harbans Kaur

...Petitioner

Versus

State of U.T. and another

...Respondents

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Karan Vir Nanda, Advocate,
for the petitioner.

Mr. D.D. Sharma, Advocate,
for respondent No.1.

Mr. Angel Sharma, Advocate,
for respondent No.2.

JITENDRA CHAUHAN, J.

The present petition has been preferred by the petitioner against the judgment and order dated 26.10.2005, passed by the Judicial Magistrate 1st Class, Chandigarh, (for short, 'the trial Court'), convicting her, under Section 138 of the Negotiable Instruments Act and sentencing her to undergo simple imprisonment for a period of 01 year and to pay a fine of ₹5,000/- or in default thereof, to further undergo simple imprisonment for a

period of 03 months; and judgment dated 27.02.2006, passed by the learned Additional Sessions Judge, Chandigarh, (for short, 'the Appellate Court'), whereby the judgment and order passed by the learned trial Court, have been upheld.

The learned counsel for the petitioner contends that the principal amount of Rs.50,000/-, along with interest of Rs.35,000/-, has already been paid to the complainant. The learned counsel further submits that the petitioner is a household lady and does not have any income at present.

The learned counsel for the complainant-respondent No.2 admits the receipt of the amount aforesaid and states that he has no objection, in case, the offence is ordered to be compounded qua the petitioner.

In ***Damodar S. Prabhu Vs. Sayed Babalal H., 2010(5) SCC 663***, the Hon'ble Apex Court has laid down as under:-

“17. We are also conscious of the view that the judicial endorsement of the above quoted guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 of the Criminal

Procedure Code cannot be followed in the strict sence. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act. The graded scheme for imposing costs is a means to encourage compounding at any early stage of litigation. In the status quo, valuable time of the Court is spent on the trial of these cases and the parties are not liable to pay any Court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance....”

In the present case, the petitioner has already repaid the entire cheque amount of Rs.50,000/- alongwith with interest of Rs.35,000/-. In Damodar's case (supra), the Hon'ble Apex Court

has laid down that if the prayer is made before the Sessions Court or High Court in revision or appeal, compounding may be allowed on payment of 15% of the cheque amount.

Accordingly, the petitioner is directed to deposit costs @ 15% of the cheque amount, with the High Court Legal Services Committee, within eight weeks from the date of receipt of a certified copy of this order.

In view of the above, the present revision petition is allowed; judgment of conviction and order of sentence dated 26.10.2005, passed by the learned trial Court, and judgment dated 27.02.2006, passed by the learned Appellate Court, are hereby set aside; and the petitioner is acquitted of the offence, she is charged with, on the basis of compounding. However, it is made clear that in case, the petitioner fails to comply with this order, the present revision petition shall be deemed to have been dismissed without further notice and the petitioner shall have to undergo the remaining part of the sentence.

The petitioner is on bail. Her bail bonds shall stand discharged.

23.12.2015

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(JITENDRA CHAUHAN)
JUDGE