

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

CRR-3334-2015 (O&M)

Date of decision : 17.11.2015

Nirmal Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. G.K. Mann, Advocate,
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

Mr. Ankur Bansal, Advocate,
for respondent No.2.

JITENDRA CHAUHAN, J.

The present petition has been preferred by the petitioner against the judgment and order dated 03.11.2012, passed by the learned Judicial Magistrate 1st Class, Amritsar, (for short, 'the trial Court'), convicting him and his co-accused, Hardial Singh, under Section 138 of the Negotiable Instruments Act and sentencing them to undergo rigorous imprisonment for a period of 02 years and to pay a fine of ₹1,000/- or in default

thereof, to further undergo simple imprisonment for a period of 02 months; and judgment dated 27.08.2015, passed by the learned Additional Sessions Judge, Amritsar, (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 an amount of Rs.1.50 lacs, as part of the liability of the petitioner, has already been paid to the complainant. A cheque amounting to Rs.62,000/-, as interest at the rate of 6% per annum, is also handed over to the learned counsel for the complainant in the Court. Thus, the entire liability on the part of the petitioner stands discharged.

The learned counsel for the complainant-respondent No.2 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 sense. 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 deposited an amount of Rs.1,50,000/- along with interest of Rs.62,000/- @ rate of 6% per annum. 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, which would come to Rs.22,500/- in the present case. However, as the petitioner has already paid Rs.62,000/- to the complainant towards interest and further imposition of 15% costs would tell heavily on the petitioner. Accordingly, this Court feels that the ends of justice would be sufficiently met, in case, the petitioner is directed to deposit costs @ 7.5% of the amount of his liability i.e. Rs.1,50,000/-, with the High Court Legal Services Committee, within two months 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 03.11.2012, passed by the learned trial Court, and judgment dated 27.08.2015, passed by the learned appellate Court, are hereby set aside and the petitioner is acquitted of the offence, he is charged with, on the basis of compounding. If 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. His bail bonds shall stand discharged.

17.11.2015

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(JITENDRA CHAUHAN)
JUDGE