

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

**CRR No. 664 of 2015 (O&M)
Date of Decision: 13.07.2015**

Swarna Devi

.....Petitioner

Vs.

Pawan Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ashok Giri, Advocate
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Present criminal revision petition, at the hands of the complainant, is directed against the impugned judgment dated 15.1.2015 passed by the learned Additional Sessions Judge, Hoshiarpur, whereby, while modifying the judgment dated 23.7.2014 passed by the learned Judicial Magistrate 1st Class, Mukerian, accused-respondent was ordered to be released on probation, upholding his conviction, directing him to deposit the cheque amount alongwith 15% of the cheque amount.

Brief facts of the case, as recorded by the learned Additional Sessions Judge in para 2 to 4 of the impugned judgment,

are that accused had good terms with the complainant-petitioner, being relatives and the accused borrowed ₹1,50,000/- from the complainant, for his personal need and due to having faith on the accused, the complainant had done the same as required by the accused. Thereafter, the accused returned ₹50,000/- by cash to the complainant and for remaining amount he issued the cheque of ₹1,00,000/- dated 10.4.2013 bearing No. 043069 of the Punjab National Bank to the complainant in order to discharge his liability, being the proprietor of Agritec Traders. On 21.5.2013, the complainant presented this cheque of ₹1,00,000/- dated 10.4.2013 bearing No. 043069 in the Punjab National Bank for payment in her account, within the validity of the cheque. The cheque was returned by the bank to the complainant for reason as "Insufficient Funds" without making payment and the complainant received back the dishonoured cheque with the bank memo of the Punjab National Bank dated 21.5.2013 Branch Kamahi Devi District, Hoshiarpur. Thereafter, the complainant many times tried her best to approach the accused and also his family members to get her money and also informed the accused about the dishonour of his cheque but to no avail. The accused also committed an offence of criminal breach of trust, misappropriation and cheating with the complainant. The complainant served a legal demand notice dated 28.5.2013 through her counsel under the provisions of law, to inform the accused about dishonour of his cheque and for getting the payment of amount of ₹1,00,000/- pertaining to this cheque, but to no avail. Hence the present complaint.

In the preliminary evidence, complainant Swarna Devi herself appeared as CW1 and closed the evidence after proving on record the requisite documents relied upon by her, including disputed cheque Ex.C1, receipt Ex.C2, memo Ex.C3, legal notice Ex.C4 and postal receipt Ex.C5.

After hearing learned counsel for the complainant and going through the documents placed on record by the complainant, the accused was ordered to be summoned to face trial for the offence under Section 138 of the NI Act, vide order dated 14.8.2013 passed by learned trial court. Accused appeared and released on bail.

Having found a prima facie case against the accused, learned trial court issued notice under Section 138 of the NI Act, which was served on the accused-respondent on 14.7.2011. He pleaded not guilty and claimed trial. In the after notice evidence, complainant-petitioner appeared as CW-1 and closed her evidence. Thereafter, statement of the accused was recorded under Section 313 Cr.P.C. Entire incriminating evidence brought on record was put to the accused. The accused pleaded false implication and claimed complete innocence. However, he did not lead any evidence in his defence.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial court came to the conclusion that complainant has brought home guilt against the accused. Accordingly, accused was convicted for the offence under Section 138 of the NI Act and he was sentenced to

undergo rigorous imprisonment for 2 years and to pay a fine of ₹2 lacs, vide judgment of conviction and order of sentence of even date, i.e. 23.7.2014 passed by the learned Judicial Magistrate 1st Class, Mukerian.

Feeling aggrieved against the judgment of conviction and order of sentence, convict filed his appeal before the learned Sessions Court, which came to be disposed of with modification to the extent upholding his conviction, accused was ordered to be released on probation, directing him to deposit the cheque amount alongwith 15% of the cheque amount, vide impugned judgment dated 15.1.2015. Hence this revision petition, at the hands of the complainant.

Learned counsel for the petitioner submits that learned Additional Sessions Judge has misdirected himself, while passing the impugned judgment. He further submits that the petitioner was not intending to compromise the matter, as she had been put to unwarranted harassment by the accused-respondent. He next contended that since learned Additional Sessions Judge has exceeded his jurisdiction, while passing the impugned judgment, the same was not sustainable in law. He concluded by submitting that learned Additional Sessions Judge has misunderstood and misinterpreted the judgment of the Hon'ble Supreme Court in Madhya Pradesh State Legal Services Authority Vs. Prateek Jain and another, 2014 (4) RCR (criminal) 178. He prays for setting aside the impugned judgment, by allowing the present criminal revision petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned judgment would show that it was the petitioner-complainant who had been delaying the compounding of the offence, for the undisclosed reasons best known to the petitioner. It was argued on behalf accused-respondent before the learned Additional Sessions Judge, as has been recorded in para 13 of the impugned judgment, that the accused-respondent was ready to pay the complainant even before learned trial court.

It has been further recorded by the learned Additional Sessions Judge, that complainant-petitioner was demanding an amount of ₹2 lacs over and above the cheque amount, which was ₹1 lac, without there being any reason for the said unreasonable demand. Having been left with no other option, learned Additional Sessions Judge has rightly exercised his discretion to order release of the convict on probation of good conduct instead of sentencing him for imprisonment. Having said that, this Court is of the considered opinion that learned Additional Sessions Judge committed no error of law, while passing the impugned judgment and the same deserves to be upheld.

Before arriving at a judicious conclusion, learned Additional Sessions Judge has examined, considered and appreciated each and every relevant aspect of the matter. The relevant observations made by the learned Additional Sessions Judge, in this regard, in para 14 and 15 of the impugned judgment, read as under:-

"I have heard the learned counsel for the parties and considered their contentions and perused the record. The offence under Section 138 of the Negotiable Instruments Act is compoundable one. The appellant-accused is not disputing his conviction but at the same time prayed for taking a lenient view by this Court as the appellant-accused is ready to pay the cheque amount to the complainant and earlier the matter were also taken in the Lok Adalat and at that time the appellant-accused was also ready to make the payment of the cheque amount to the complainant and he had also brought the cheque amount with him to pay the same to the complainant but the complainant had not received the cheque amount till today and the complainant has also failed to explain the reason why she is or was not accepting the cheque amount when the appellant-accused is or was ready to pay the cheque amount to her, when the offence is compoundable one and the complainant-respondent is also not ready to accept

the cheque amount even before the trial court, before this court and even in the Lok Adalat. In these circumstances, this court is of the opinion that keeping in view the conduct of the parties, the appellant-accused is ready to pay the cheque amount before the Lok Adalat as well as also ready to pay the cheque amount to the complainant today but the complainant remained failed to received the cheque amount and also failed to explain any reason by not accepting the cheque amount before this Court. This Court is further of the opinion that in these circumstances, keeping in view the conduct of the parties as referred above when the offence is compoundable and appellant-accused is ready to pay the cheque amount to the complainant therein the interest of justice, no harsh order by sending the appellant-accusedn the jail by sentencing him is not required to be passed in this case, while keeping in view the overall facts and circumstances of this case and relying upon the citation of Hon'ble Supreme Court of India in case titled as Madhya Pradesh State Legal Services Authority Vs. Prateek Jain and Another passed in Civil Appeal No. 8614 of 2014 (arising out of Special Leave Petition (civil) No. 38519 of 2012) which is fully applicable in this case.

In the light of facts and circumstance of this case, keeping in view the conduct of the parties as well as citation of Hon'ble Supreme Court as observed above, this Court is of the opinion that as the appellant-accused is not disputing his conviction, the appeal of the appellant-accused is ordered to be dismissed and appellant-accused is directed to deposit the cheque amount of Rs. One lac in the Court and 15% of the cheque amount is ordered to be deposited with District Legal Services Authority, Hoshiarpur. The sentence awarded to the appellant-accused by the learned trial court as well as compensation amounting to Rs. 2,00,000/- is set aside and appellant-accused is ordered to be released on probation of good conduct instead of sentencing him to imprisonment and he be released on his entering into personal bonds of Rs. 25,000/- for one year undertaking to appear and received sentence as and when called upon during this period and would not repeat the offence punishable under the Act as referred above and would keep peace and be of good behaviour. Fine paid by the appellant-accused before the learned trial court is ordered to be treated as costs of litigation. It is further ordered that the respondent-complainant is set at liberty to withdraw the cheque

amount by filing any appropriate application, as per law.

The argument raised by the learned counsel for the petitioner that learned Additional Sessions Judge has misunderstood and misinterpreted the judgment of the Hon'ble Supreme Court in Prateek Jain's case (supra) has been found without any substance. In this regard, relevant observations made by the Hon'ble Supreme Court in para 24 to 26 of its judgment in Prateek Jain's case (supra), which can be gainfully followed in the present case, read as under:-

It is clear from the reading of the aforesaid para that the Court made it clear that framing of the said guidelines did not amount to judicial legislation. In the opinion of the Court, since Section 147 of the Act did not carry any guidance on how to proceed with compounding of the offences under the Act and Section 320 of the Code of Criminal Procedure, 1973 could not be followed in strict sense in respect of offences pertaining to Section 138 of the Act, there was a legislative vacuum which prompted the Court to frame those guidelines to achieve the following objectives:

(i) to discourage litigants from unduly delaying the composition of offences in cases involving Section 138 of the Act;

(ii) it would result in encouraging compounding at an early stage of litigation saving valuable time of

*the Court which is spent on the trial of such cases;
and*

(iii) even though imposition of costs by the competent Court is a matter of discretion, the scale of cost had been suggested to attain uniformity.

At the same time, the Court also made it abundantly clear that the concerned Court would be at liberty to reduce the costs with regard to specific facts and circumstances of a case, while recording reasons in writing for such variance.

What follows from the above is that normally costs as specified in the guidelines laid down in the said judgment has to be imposed on the accused persons while permitting compounding. There can be departure therefrom in a particular case, for good reasons to be recorded in writing by the concerned Court. It is for this reason that the Court mentioned three objectives which were sought to be achieved by framing those guidelines, as taken note of above. It is thus manifestly the framing of "Guidelines" in this judgment was also to achieve a particular public purpose. Here comes the issue for consideration as to whether these guidelines are to be given a go by when a case is decided/settled in the Lok Adalat? Our answer is that it may not be necessarily so and

a proper balance can be struck taking care of both the situations.

*Having regard thereto, we are of the opinion that even when a case is decided in Lok Adalat, the requirement of following the guidelines contained in **Damodar S. Prabhu** (supra) should normally not be dispensed with. However, if there is a special/specific reason to deviate therefrom, the Court is not remediless as **Damodar S. Prabhu** (supra) itself has given discretion to the concerned Court to reduce the costs with regard to specific facts and circumstances of the case, while recording reasons in writing about such variance. Therefore, in those matters where the case has to be decided/settled in the Lok Adalat, if the Court finds that it is a result of positive attitude of the parties, in such appropriate cases, the Court can always reduce the costs by imposing minimal costs or even waive the same. For that, it would be for the parties, particularly the accused person, to make out a plausible case for the waiver/reduction of costs and to convince the concerned Court about the same. This course of action, according to us, would strike a balance between the two competing but equally important interests, namely, achieving the objectives delineated in **Damodar S. Prabhu***

(supra) on the one hand and the public interest which is sought to be achieved by encouraging settlements/resolution of case through Lok Adalats."

Reverting back to the peculiar facts and circumstances of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H. 2010 (2) RCR (criminal) 851** as well as in **Prateek Jain's case** (supra), this Court is of the considered view that no interference is warranted at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one.

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638**. The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been further reiterated by the Hon'ble Supreme Court in its numerous later judgments, including in the cases of **Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140**, **Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657** and **Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015)**. The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in **Upendra Pradhan's case** (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see Dhanna v. State of M.P., Mahabir Singh v. State of Haryana and Shailendra Pratap v. State of U.P.) which had not been adhered to by the High Court.

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33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the

one supporting the accused should be upheld.”
(Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, wherein this Court observed thus:

*“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see *Bhagwan Singh v. State of M.P.*) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.”* (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be Page 16 16 considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court's revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, "that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view." This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge."

During the course of arguments, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality in the impugned judgment passed by the learned Additional Sessions Judge, which may warranted interference at the hands of this Court. In such a situation, no interference is warranted and the impugned judgment deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present criminal revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, present criminal revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

13.07.2015
Ak Sharma