IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.872 of 2015 (O&M)
Decided on : 19.03.2015

Surinder Kumar Nadha @ Shinda .... Petitioner

Vs.

Ram Chand Sama .... Respondent

CORAM:- HON'BLE MR. JUSTICE PARAMJEET SINGH

Present:- Mr. Ajay Kamboj, Advocate
for the petitioner.

Mr. P.S.Jammu, Advocate
for the respondent.

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Paramjeet Singh, J.(Oral)

Present criminal revision has been preferred by the petitioner against judgment dated 07.02.2015 passed by learned Additional Sessions Judge, Fazilka, thereby dismissing the appeal filed by the petitioner against the judgment of conviction and order of sentence dated 16.07.2014 passed by learned Chief Judicial Magistrate, Fazilka, vide which the petitioner has been convicted for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.3,000/- and in default, further undergo rigorous imprisonment for a period of one month. The petitioner-accused has further been ordered to pay Rs.2,00,000/- as compensation under Section 357(3) Cr.P.C. to the complainant-respondent.

Brief facts of the case are that criminal complaint was filed by the respondent-complainant against the petitioner under Section

138 of the Negotiable Instruments Act of the Indian Penal Code with the averments that the accused took a loan from the complainant of Rs.2,00,000/- on 08.08.2013 and in order to discharge liability to pay back loan amount of Rs.2,00,000/-, the accused issued cheque bearing No.332688 dated 22.8.2013 for Rs.2,00,000/-. Said cheque on presentation for encashment was dishonoured with the remarks "funds insufficient". Thereafter, the complainant served notice dated 16.09.2013 upon the accused, but the accused failed to comply with the notice. After recording preliminary evidence, the accused-petitioner was summoned under Section 138 of the Negotiable Instruments Act. Finding a prima facie case against the petitioner, notice of accusation was served upon the accused-petitioner to which the accused-petitioner pleaded not guilty and claimed trial.

The complainant, in order to prove his case, examined himself as CW1, Sunita Sharma as CW2 and Radhey Sham, Record Keeper, Punjab National Bank, Fazilka as CW3 and closed his evidence.

Thereafter, statement of the accused was recorded under Section 313 Cr.P.C. In defence the accused examined himself as DW1, Rajinder Singh, Manager, Cooperative Bank Mandi Board as DW2 and proved his signatures on Mark -D1 and D2. All incriminating circumstances were put to him. He denied the same and pleaded innocence.

The learned Trial Court, after appreciation of the evidence, convicted and sentenced the petitioners as aforesaid vide judgment and order dated 16.07.2014. Thereafter, the petitioner preferred an appeal, which was dismissed by the learned Additional Sessions Judge, Fazilka, vide judgment dated 07.02.2015.

I have heard the learned counsel for the parties and perused the record.

Learned counsel for the parties state that the dispute has been settled amicably.

Learned counsel for the respondent submits that in compliance of order dated 12.03.2015, Sh. Rajinder Kumar s/o Ram Chand Sama is present in Court today and states that he has been authorised by his father – Ram Chand Sama to make a statement that the parties have compromised the matter and the respondent would have no objection, if the present revision is allowed and the petitioner is acquitted in the complaint in question on the basis of compromise. Rajinder Kumar Sama- son of the respondent has also produced authority letter (power of attorney) of Ram Chand Sama along with his discharge summary, which is taken on record. Counsel for the respondent affirms the compromise between the parties and states that the entire amount has been paid by the petitioner to respondent and this fact has also been mentioned in the affidavit (vernacular) submitted in Court today.

The Hon'ble Apex Court in the matter of ***Damodar S. Prabhu versus Sayed Bablal H. reported in 2010(2) R.C.R. (Criminal) 851***, has held as under:-

> *"15. With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at*

any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:-

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure

> *would increase to 20% of the cheque amount. Let it also be clarified that any costs imposed in accordance with these guidelines should be deposited with the Legal Services Authority operating at the level of the Court before which compounding takes place. For instance, in case of compounding during the pendency of proceedings before a Magistrate's Court or a Court of Sessions, such costs should be deposited with the District Legal Services Authority. Likewise, costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with Crl. Revision No.4005 of 2012 -5- composition before the Supreme Court should be deposited with the National Legal Services Authority."*

Consequently, keeping in view the compromise between the parties and the law laid down by the Hon'ble Apex Court in the matter of ***Damodar S. Prabhu (supra)***, present revision petition is allowed. Impugned judgments and order of sentence are set aside and criminal complaint filed by the complainant is quashed, subject to deposit of 15% of the settled amount of Rs.2,00,000/- i.e. Rs.30,000/- with the District Legal Services Authority, Fazilka. The petitioner shall be released, if not required in any other case, on deposit of aforesaid amount of Rs.30,000/-, as directed aforesaid.

Disposed of accordingly.

19.03.2015 **(Paramjeet Singh)**
sonia **Judge**