

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

CRR No. 4871 of 2015 (O&M)

Date of Decision:-22.01.2016

Joginder Pal

...Petitioner

Versus

M/s. Fullerton India Credit Co.Ltd & anr.

...Respondents

CORAM :- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Ms. Sukhpreet Kaur, Advocate for the petitioner

Mr. Vikas Duggal, Advocate for
Mr. Sandeep Suri, Advocate for respondent No.1.

Ms. Shaveta Sanghi, AAG, Haryana
for respondent No.2-State.

HARI PAL VERMA, J (ORAL)

Petitioner, namely, Joginder Pal son of Sh. Inder Singh, Proprietor of Wellwisher Footwear, resident of House No. 935, Ward No.1, Jodiwara, Behind Vishkarma Mandir, Ambala City has filed the present revision petition against the order dated 17.11.2015 passed by learned Addl. Sessions Judge, Ambala, whereby, his appeal against the judgment of conviction dated 18.04.2013 and order of sentence dated 20.04.2013 passed by learned Judicial Magistrate 1st Class, Ambala, was dismissed.

Respondent No.1-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (*for brevity "the Act"*) alleging therein that the petitioner-accused had availed a loan of an amount of Rs.1,50,000/- for which he executed a loan agreement separately. In order to discharge the liability of the said loan, the petitioner-accused issued three cheques bearing No.646705, dated 02.03.2009 for Rs.18,750/-; 646703 dated 09.03.2009 for Rs.75,000/- and 646704 dated 14.03.2009 for Rs.37,500/-, drawn on State Bank of Patiala, Ambala City, but when the complainant deposited the said cheques for collection, same were dishonored with the remarks "*Exceed Arrangement*".

The learned Magistrate, after hearing both the sides and appreciating the evidence, held the accused-petitioner guilty of the offence punishable under section 138 of the Act vide judgment of conviction dated 18.04.2013 and sentenced him vide order of sentence dated 20.04.2013 to undergo simple imprisonment for six months and to pay the cheque amount of Rs.1,31,250/- to the complainant.

Aggrieved against the said judgment of conviction and order of sentence, petitioner-accused filed an appeal before the learned Additional Sessions Judge, Ambala, however said appeal was dismissed vide judgment dated 17.11.2015. It is in the aforesaid circumstances, the petitioner-accused filed the instant revision.

Learned counsel for the petitioners submits that during the pendency of the instant revision, a settlement has been arrived at between the petitioner and respondent No.1 and as per the said settlement, petitioner-accused has paid an amount of Rs.45000/- to respondent No.1, towards the full and final settlement vide receipt dated 30.12.2015. She also produced a copy of said receipt dated 30.12.2015 alongwith letter dated 25.12.2015 issued by respondent No.1 acknowledging settlement for an amount of Rs.45,000/- as against the total amount of Rs.2,82,626.34, outstanding in the loan account No.053015100001210 of petitioner-accused. She further submits that as the petitioner-accused has cleared all the outstanding of the respondent No.1-complainant, he be acquitted of the charges framed against him. The receipt dated 30.12.2015 as well letter dated 25.12.2015 are taken on record.

Learned counsel appearing for respondents No.1-complainant admits the factum of settlement arrived at between the petitioner-accused and the respondent No.1-complainant during the pendency of instant revision petition and submits that the entire outstanding amount stands repaid by the petitioner-accused as per the settlement. He also submits that he has no objection in case the present revision petition is disposed of or the petitioner is acquitted of charges framed against him.

Learned counsel for the State on the other hand submits that though the matter has been compromised between the parties but petitioner-accused has put the entire State

machinery in motion and as per the ratio of law laid down by Hon'ble Apex Court in **Damodar S. Prabhu Vs. Sayed Babalal H., 2010 (2) RCR (Crl.) 851**, he is required to pay 15% of the cheque amount to the State exchequer.

Learned counsel for the petitioner-accused submits that petitioner is a poor person and is earning his livelihood by selling footwear on a small 'rehri' and payment of 15% of cheque amount would be very difficult for him. Furthermore, he is suffering agony of trial since 22.05.2009, the date when complainant was filed. She further submits that now the matter has been compromised between the parties and pursuant thereto, the petitioner has paid an amount of Rs.45,000/-to the respondent No.1-complainant and under such circumstances the deposit of 15% amount may be reduced to some extent.

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

Hon'ble Apex Court in Damodar S. Prabhu's case (supra) has held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. Hon'ble Apex Court laid down the following guidelines for compounding of such like offences:-

“(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.”*

Hon’ble Apex Court in the Damodar S. Prabhu's case (supra) has further held that 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 and 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.

Therefore, taking into consideration the ratio of law laid down by Hon’ble Apex Court in Damodar S. Prabhu's case (supra); the fact that matter has been compromised between the parties during the pendency of the proceedings before this Court and that

the petitioner being a poor person, I of the view that ends of justice would be met, if the requirement of deposit of 15% of the cheque amount is reduced to 10% of the cheque amount.

Accordingly, keeping in view the fact that the matter has been finally settled and the liability is discharged; the present revision petition is allowed; judgment of conviction dated 18.04.2013 and order of sentence dated 20.04.2013 passed by learned Judicial Magistrate 1st Class, Ambala in Criminal Complaint No.1134 of 2009 as well as judgment dated 17.11.2015 passed in Criminal Appeal No. 83 of 2013 by learned Addl. Sessions Judge, Ambala, affirming the conviction of petitioner-accused, are set aside and the petitioner is acquitted of the charges framed against him subject to deposit of 10% of the cheque amount with the State Legal Services Authority, Haryana.

The petitioner-Joginder Pal be released forthwith if not required in any other case, subject to deposit of the 10% of the cheque amount with the State Legal Services Authority, Haryana.

With these directions, the present petition stands disposed of.

22.01.2016
ANJAL

(HARI PAL VERMA)
JUDGE