

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

**Criminal Revision No.832 of 2015
Date of Decision:-25.02.2016**

Sushila Devi

...Petitioner

Versus

State of Punjab and another

...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:- Mr. Bhanu Partap Singh, Advocate
for the petitioner.

Mr. Gurinderjit Singh, Deputy A.G., Punjab.

Mr. Arnav Sood, Advocate
for respondent No.2.

HARI PAL VERMA J.(Oral)

Petitioner Sushila Devi wife of Ajay Kumar, resident of village Rampur Bilon, Tehsil Garhshankar, District Hoshiarpur has filed the present revision petition impugning the judgment dated 12.2.2015 passed by learned Additional Sessions Judge, Hoshiarpur, whereby her appeal against the judgment and order dated 9.9.2014 passed by learned Judicial Magistrate 1st Class, Garhshankar was dismissed.

Briefly stated it is the case of the respondent-complainant that petitioner-accused borrowed an amount of Rs.2,00,000/- from him and in order to discharge her liability, the petitioner issued a cheque No.581885 dated 18.10.2012 for an amount of Rs.2,00,000/- in favour of the respondent No.2-complainant. The cheque was presented in the bank for collection through his banker i.e. Axis Bank, Branch Garhshankar, however, the said cheque was dishonoured and memo dated 28.12.2012 was issued with the remarks 'Funds Insufficient'. The respondent-complainant issued a registered legal notice dated 15.1.2013 calling upon the petitioner to make the payment of the cheque amount within 15 days. The petitioner failed to make the payment within the time prescribed and, therefore, complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as 'the Act') was filed.

Learned Magistrate vide judgment dated 9.9.2014 held the petitioner guilty for committing the offence punishable under Section 138 of the Act and accordingly, sentenced to undergo imprisonment for six months.

The petitioner filed an appeal against the judgment of conviction and sentence dated 9.9.2014. The said appeal was also dismissed by learned Additional Sessions Judge, Hoshiarpur vide judgment dated 12.2.2015. It is in the aforesaid circumstances, the present revision petition has been filed.

Learned counsel for the petitioner has contended that during the pendency of the present revision petition, the matter has been compromised between the parties and the compromise entered between the petitioner Sushila Devi and respondent-complainant Jasvir Singh is placed on record as Annexure P-1. Pursuant to the compromise dated 23.3.2015 entered between the parties, the petitioner has paid the whole cheque amount to the respondent No.2-complainant. He further contends that the petitioner is an old lady about 50 years of age and is surrounded by poverty. She has hardly able to earn her livelihood as her husband is merely a private driver, who is getting work occasionally. Furthermore, she is suffering the agony of the trial since 12.2.2013 when the complaint was filed. With a great difficulty she could arrange the money to arrive at settlement. She is not even in a position to pay the compounding penalty as observed by Hon'ble Apex Court in **Damodar S. Prabhu Vs. Sayed Babalal H., 2010 (2) RCR (Cr1.) 851.**

Learned counsel for the respondent-complainant does not dispute the factum of compromise arrived at between the parties and submits that the entire outstanding amount stands repaid by the petitioner-accused as per the settlement. He submits that he has no objection in case the present revision petition is disposed of or the petitioner is acquitted of the charges framed against him.

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 between the parties and the petitioner has discharged her liabilities, the present petition is allowed; judgment of conviction and order of sentence dated 9.9.2014 passed by learned Judicial Magistrate 1st Class, Garhshankar in Criminal Complaint No.51 of 2013 as well as judgment dated 12.2.2015 in Criminal Appeal No.59 of 1.10.2014 passed by learned Additional Sessions Judge, Hoshiarpur, affirming the conviction of the petitioner-accused, are set aside and the petitioner is acquitted of the charges framed against her subject to deposit of 10% of the cheque amount with the State Legal Services Authority, Punjab within one month from today.

In case the petitioner fails to deposit the 10% of the cheque amount with the State Legal Services Authority, Punjab, the revision petition preferred by her will deemed to have been dismissed.

With these directions, the present petition stands disposed of.

A copy of this order be sent to the Chief Judicial Magistrate, Hoshiarpur, for necessary compliance.

February 25, 2016
Vijay Asija

(**HARI PAL VERMA**)
JUDGE

