

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 229

Case No. : Crl. Revn. No. 1334 of 2016 (O&M)

Date of Decision : March 16, 2017

Raman Kumar Petitioner

VS.

Prem Kumar Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Achin Gupta, Advocate
for the petitioner.

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DEEPAK SIBAL, J. :

The complainant – Prem Kumar instituted a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short – the Act) on the strength of allegations that the petitioner had raised a loan from the complainant of ₹ 1,20,000/-, in discharge of which, the petitioner issued a cheque, which, on presentation, was dishonoured with the remarks “insufficient funds”. The complainant then got a legal notice issued to the petitioner but when the same was not responded to, the aforesaid complaint was filed.

After trial, through order dated 13.03.2015, the petitioner was convicted by the trial court. Such order was taken up in appeal by the petitioner, which was also dismissed by the Sessions Judge, Ferozepur, giving a cause to the petitioner to file the present petition.

In view of the fact that the petitioner compromised the matter with the complainant, along with the present petition, the petitioner filed an application under Section 320(6) of the Code of Criminal Procedure, 1973 (for short – the Code) for compounding of the offence.

When the present petition came up for hearing, while issuing notice to the respondent, this Court was of the view that even if the petitioner has paid the cheque amount to the complainant for compounding of the offence, as per the guidelines given by the Apex Court in **Damodar Singh Prabhu vs. Sayed Babalal H. - 2010 (2) RCR (Criminal) 851**, the petitioner was also required to deposit 15% of the cheque amount as costs. The afore-referred order of this Court reads as under :-

“On account of dishonour of a cheque for ₹ 1,20,000/- issued by the petitioner, the respondent proceeded against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short ‘Act’).

Through order dated 13.03.2015, the petitioner was convicted for the above referred offence by the Judicial Magistrate First Class, Ferozepur and on such conviction, he was sentenced to undergo imprisonment for a period of one year and pay fine to the tune of ₹ 3,000/-. In case of default in payment of fine, he was ordered to further undergo rigorous imprisonment for 30 days. Against the aforesaid order the petitioner preferred an appeal, which was dismissed by the Sessions Judge, Ferozepur vide order dated 25.01.2016.

On 05.04.2016 while issuing notice of motion this Court had ordered suspension of the petitioner's sentence after recording the statement made by the learned counsel for the petitioner that the matter had been compromised between the petitioner and the complainant. The petitioner was also directed to deposit 15% of the cheque amount with the Punjab State Legal Services Authority, Chandigarh. Learned counsel for the petitioner submits that though the cheque amount of ₹ 1,20,000/- has been paid, due to the petitioner's weak financial position 15% of the cheque amount could not be deposited in time. Till date the amount has not been deposited.

Learned counsel for the petitioner prays for some more time to do the needful which in the interest of justice, is granted.

The petitioner shall now, within 4 weeks deposit 15% of the cheque amount with the District Office of the Punjab State Legal Services Authority at Ferozepur. After the above deposit has been made, the parties are directed to appear before the Chief Judicial Magistrate, Ferozepur for recording of their statements with regard to the fact of having arrived at an amicable settlement. In this regard, the CJM, Ferozepur would sent its report to this Court before the adjourned date.

Adjourned to 16.03.2017.”

In compliance with the afore-quoted order, report by the Chief

Judicial Magistrate, Ferozepur has been received, in which it has been

acknowledged that the petitioner, as directed, has made a deposit of 15% of the cheque amount with the District Legal Services Authority, Ferozepur.

From the above, it is clear that as per the compromise arrived at between the petitioner and the complainant, he has paid to him the cheque amount. The afore-referred report by the Chief Judicial Magistrate, Ferozepur shows that 15% of the cheque amount has also been deposited by the petitioner as costs.

In spite of notice having been served upon the respondent, he has chosen not to appear before this Court to controvert the above facts.

In view of the above, as per the guidelines enunciated by the Apex Court in Damodar Singh Prabhu's case (*supra*), the offence, for which the petitioner has been convicted, is ordered to be compounded after setting aside the impugned conviction.

The revision petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

March 16, 2017
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<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>