

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

CRR No.2648 of 2017 (O&M).

Decided on:-12.09.2017.

Narotam Singh alias Bhola Singh.

.....Petitioner.

Versus

Bhagwan Dass.

.....Respondent.

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

Present:- Mr. Bikramjeet Singh Jatana, Advocate
for the petitioner.

Mr. Munish Raj Chaudhry, Advocate
for the respondent.

HARI PAL VERMA, J. (ORAL)

The petitioner-accused has filed the present revision petition against the judgment dated 21.07.2017 passed by learned Additional Sessions Judge, Mansa whereby his appeal filed against the judgment of conviction and order of sentence dated 07.02.2014 passed by learned Sub-Divisional Judicial Magistrate, Budhlada, was dismissed.

Briefly stated, the facts of the case are that the respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) alleging therein that the petitioner-accused in discharge of his legal liability issued a cheque bearing No.463093 dated 01.06.2012 in the sum of Rs.3,00,000/- in favour of the respondent-complainant. However, when the respondent-complainant presented the said cheque for encashment in the bank on 02.06.2012, the same was dishonoured

by the bank with the remarks “insufficient funds”. Thereafter, a legal notice dated 06.06.2012 was issued by the respondent-complainant to the petitioner-accused but the petitioner failed to make the payment. As such, the complaint was filed against him.

Learned Magistrate vide judgment and order dated 07.02.2014 convicted the petitioner for offence punishable under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of two years with fine of Rs.5,000/- and in default thereof, to further undergo imprisonment for two months.

Aggrieved against the said judgment and order, the petitioner-accused filed an appeal before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Mansa vide judgment dated 21.07.2017.

It is in these circumstances, the petitioner has preferred the present revision petition before this Court.

Learned counsel for the petitioner has contended that during pendency of the present revision petition, a compromise has been arrived at between the parties and as per the said compromise, the petitioner has paid the entire amount of the cheque in question to the respondent. He has contended that the compromise deed (Annexure P-3) and affidavit of the respondent-complainant in support of said compromise (Annexure P-4) have already been taken on record vide order dated August 18, 2017 of this Court.

Learned counsel for the petitioner has submitted that in view of compromise, permission to compound the offence may also be granted. He

has further submitted that since the petitioner has cleared all the outstanding amount of the respondent, he may be acquitted of the charges framed against him.

Furthermore, he has contended that the petitioner-accused is a poor person and is the only bread winner of his family. He is a first time offender and is facing the criminal proceedings since 10.07.2012 i.e. the date when the complaint was filed against him. Thus, he is not in a condition to pay 15% of the cheque amount to the State exchequer as per guidelines laid down by Hon'ble Supreme Court in ***Damodar S. Prabhu Versus Sayed Babalal H. 2010(2) RCR (Criminal) 851***. He has prayed that the deposit of 15% amount may be reduced to some extent.

On the other hand, learned counsel for the respondent-complainant has admitted the factum of compromise arrived at between the petitioner-accused and the respondent-complainant and submitted that the entire outstanding amount stands repaid by the petitioner-accused as per the settlement. He has also submitted that he has no objection in case the offence is compounded or the petitioner is acquitted of charge framed against him.

I have heard learned counsel for the parties.

In ***Damodar S. Prabhu's case (supra)***, Hon'ble Supreme Court has held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. The Apex Court has 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.”

The Apex Court in ***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 the Apex Court in ***Damodar S. Prabhu's case (supra)*** coupled with 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, this Court finds 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.

Therefore, necessary permission to compound the offence under Section 138 of the Act is granted. The impugned judgment of conviction and order of sentence dated 07.02.2014 passed by the trial Court as well as the judgment dated 21.07.2017 passed by learned appellate Court are set aside and the petitioner is acquitted of the charge levelled against him subject to deposit of 10% of the cheque amount with the State Legal Services Authority, Punjab within a period of one month from today.

The fine imposed upon the petitioner, if already paid, be refunded to him as per rules.

Accordingly, the present revision petition stands allowed.

However, it is made clear that in case the petitioner fails to deposit the 10% of the cheque amount with the aforesaid authority within a period of one month, the present petition shall stand dismissed automatically and he shall be liable to undergo the remaining part of his sentence, as imposed by learned trial Court.

September 12, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No