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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 1811/2017**

SURESH MALIK

..... Petitioner

Through: Petitioner in person alongwith wife
Ms. Suman alongwith counsel

versus

STATE & ANR.

..... Respondents

Through: Mr. R. S. Kundu, ASC for State

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **21.06.2017**

Mr. Kundu, Id. ASC submits that in view of the fact that the instant proceedings arise out of the proceedings under Section 138 N.I. Act, no status report is being filed and as far as State is concerned, it has no objection for quashing of the proceedings, if, the court finds it proper to do so.

Both the Id. Counsel for the applicant and the respondent no. 2, who is present in the court and also his counsel, reaffirm that the petitioner and the respondent no. 2 have arrived at the compromise/settlement. It is submitted that the proceedings may be quashed in order to achieve the ends of justice.

In that regard reliance is placed **upon (2010) 5 SCC 663 in 'Damodar S.Prabhu Vs. Sayed Babalal H'**. In Damodar's case

(supra) the Hon'ble Supreme Court laid down guidelines in the similar case as follows:

“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.”

In the following judgment of the Hon'ble Supreme Court in *Damodar S. Prabhu Vs. Sayed Babalal H.* AIR 2010 SC 1907, as regards the imposition of the costs, it came to be observed as under:-

“17. We are also conscious of the view that the judicial endorsement of the above quoted guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the

compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 of the CrPC cannot be followed in the strict sense. In view of the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act. The graded scheme for imposition costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the Court is spent on the trial of these cases and the parties are not liable to pay any Court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. 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. 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. Bona fide litigants should of course contest the proceedings to other logical end. Even in the past, this Court has used its power to do complete justice under Article 142 of the Constitution to frame guidelines in relation to subject matter where there was a legislative vacuum.”

As regards quantum of costs, learned counsel for the petitioner and respondent no.2 unequivocally state at Bar that both the parties are brothers and have arrived at a compromise without payment of any part of the cheque amount or compensation thereof, in view of their relation, and, also the fact that the petitioner has already spent almost three months in incarceration. Both the petitioners and respo

ndent no.2 are also stated to be persons of not much financial means.

Keeping in view the totality of facts and circumstances, subject to deposit of Rs.5,000/- with High Court Legal Service Authority, the impugned judgment of the conviction and order on sentence are set aside, in the interest of justice. Petitioner shall be released forthwith, if,

not wanted in any other case.

Petition is disposed off accordingly.

Copy of this order be also sent to Jail Superintendent.

Dasti for both the parties.

JUNE 21, 2017

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**A. K. CHAWLA, J
(Vacation Judge)**