

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**I.A.No.1 of 2018 in Crl.R.C.No.1957 of 2005**

**and**

**Crl.R.C.No.1957 of 2005**

**COMMON ORDER:**

The petitioner/Accused is present and identified by his counsel Sri C.B. Ram Mohan Reddy. The respondent/complainant—Sri Sk. Sulaman is also present.

2) The complainant filed C.C.No.222 of 2005 before the Special Judicial Magistrate of First Class (Excise), West Godavari, Eluru, under Section 138 of Negotiable Instruments Act (for short "N.I Act") on the allegation that cheque for Rs.1,50,000/- dated 31.01.2004 issued by the accused towards part payment of the pronote debt was bounced back. The accused contested the matter. The Trial Court convicted the accused and sentenced him to undergo Simple Imprisonment for one year and to pay a fine of Rs.1000/-, in default to suffer S.I for three months.

3) Aggrieved, the accused preferred Criminal Appeal No.151/2005 before the learned Principal Sessions Judge, West Godavari, Eluru and the same was dismissed by confirming the judgment dated 05.08.2005 passed by the Trial Court.

Aggrieved, the accused preferred the instant Crl.R.C.No.1957 of 2005.

4) When the matter is pending, both parties filed I.A.No.1 of 2018 under Section 147 of N.I. Act, submitting that at the intervention of elders both of them have entered into compromise and they propose to compound the offence and therefore, the petition may be allowed and the conviction and sentence passed against the accused by the Trial Court, which was confirmed by the lower Appellate Court may be set aside by acquitting him. In the compounding petition it is submitted that the accused paid Rs.1,50,000/- being the cheque amount and also an additional amount of Rs.50,000/- towards costs and damages.

5) During the course of enquiry when questioned, the complainant admitted that he received Rs.2,00,000/- from the accused by way of cash and submitted that he has no objection for setting aside the conviction and sentence passed by the Trial Court and confirmed by the lower Appellate Court. As per Section 147 of N.I Act, notwithstanding anything contained in the Code of Criminal Procedure, every offence punishable under this Act shall be compoundable. As such there can be no demur that the instant offence is compoundable. Now coming to the guidelines laid down by Hon'ble Apex Court, in *Damodar S. Prabhu v. Sayed Babalal H.*<sup>1</sup> if the application for compounding is made before the Sessions Court or 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. Therefore, as per the said guideline, the petitioner/

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<sup>1</sup> (2010) 5 SCC 663

accused in this case is liable to pay Rs.22,500/- (cheque amount is Rs.1,50,000/-). However, in the said decision, the Apex Court has observed thus:

*“**Para 25:** x x x . . . . 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 their logical end.”*

Having regard to the relaxation clause mentioned in the said judgment, the Court can reduce the costs with regard to the specific facts and circumstances of a case. In the instant case, the submission of petitioner/accused is that he is working as a clerk in Jewellery Shop at Eluru and getting Rs.8,000/- p.m and he has to fend himself and his wife. His wife is suffering with diseases as she met with an accident and every month he is spending exclusively Rs.4,000/- for her medicines and in those circumstances lenience may be shown in imposition of costs.

6) Having regard to the above submission, this Court is of the considered view that instead of imposing 15%, 10% of the cheque amount can be imposed by way of costs and accordingly, directed the petitioner/accused to deposit the said amount with the High Court Legal Services Committee. The petitioner deposited Rs.15,000/- with

the High Court Legal Services Committee, Hyderabad vide Receipt No.1052 dated 15.11.2018 and produced before this Court.

7) In that view, I.A.No.1 of 2018 is allowed and the parties are permitted to compound the offence. Consequently, the CrI.R.C.No.1957 of 2005 is also allowed and the conviction and sentence passed by the Trial Court and confirmed by the lower Appellate Court are set aside and the petitioner/accused is acquitted of the offence.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 15.11.2018  
scs

**U.DURGA PRASAD RAO, J**

