

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-37343-2011 (O&M)
Date of Decision:-29.10.2018.

Subhash Chander Marwaha

.....Petitioner

Versus

Gulzar Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. S.S. Behl, Advocate for the petitioner.

Mr. R.S. Bains, Advocate for the respondent.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, petitioner has sought for quashing of the order dated 8.10.2011 (Annexure P-4) passed by the Court of Additional Sessions Judge, Ludhiana in Cr. Appeal No.3 of 2007, vide which the application for compounding of offence and discharge of accused/petitioner has been dismissed.

2.) Parties have arrived at compromise and seeking setting aside of the judgments of the Court below on the basis of compromise.

3.) Learned counsel for both the parties submitted that calculation prepared by the petitioner has not been disputed by counsel for the respondent so also respondent. Thus, matter has been settled among the parties.

4.) Heard the learned counsel for the parties.

5.) On 14.09.2018, factum of compromise was recorded and direction was given to petitioner to deposit 15% of the cheque amount in the State Legal Service Authority, Haryana and to pay litigation cost of Rs.80,000/- to the complainant. There is compliance to the order dated 14.09.2018. Petitioner furnished photocopy of the demand draft No.008670 dated 11.10.2018 for a sum of Rs.30,000/- in Court. Respondent's account has been settled and he is agreed to the request to compound the offence.

Hon'ble the Supreme Court issued guidelines in the case titled as **Damodar S. Prabhu Vs. Sayed Babulal H. reported in 2010 (5) SCC 663.** Relevant extract of the judgment reads as under:-

“21. With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:-

THE GUIDELINES

(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.

22. Let it also be clarified that any costs imposed in accordance with these guidelines should be deposited with the Legal Services Authority operating at the level of the Court before which compounding takes place. For instance, in case of compounding during the pendency of proceedings before a Magistrate's Court or a Court of Sessions, such costs should be deposited with the District Legal Services Authority. Likewise, costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with composition before the Supreme Court should be deposited with the National Legal Services Authority."

In view of the law laid down in the Damodar S. Prabhu's case

cited supra, as the petitioner has made payment of cheque amount of Rs.2,00,000/- to the respondent along with interest @ 9% per annum from the date of issuance of cheque to till its realization with Rs.80,000/- litigation cost and compliance of deposit in view of the cited supra case, this petition is allowed and order dated 8.10.2011 (Annexure P-4) passed by the Court of Additional Sessions Judge, Ludhiana in Cr. Appeal No.3 of 2007 is set aside. Parties are permitted to compound the offence. Petitioner is acquitted of the charge. Appellate Court is directed to discharge the bail bond and surety bond of the petitioner, in accordance with law.

(P.B. BAJANTHRI)
JUDGE

October 29, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.