

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

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**CRM-M-44501-2016 (O&M)
Date of decision:25.05.2018**

M/s Mahadev Processor and another

...Petitioners

Versus

M/s Vat Dychemols

.... Respondent

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

Present: Mr.Varun Baanth, Advocate for the petitioners.

Mr. I.P.S. Sabharwal, Advocate for the respondent.

P.B. BAJANTHRI, J. (ORAL)

In the present petition, petitioners have prayed for the following relief:-

“Petitioner under Section 482 of the Cr.P.C. or quashing of complaint under Section 138 of the N.I.Act, 737/2013 dated 06.05.2013 (P-1) and all the subsequent proceedings arising out of the same in view of the provision of Section 147 of the Negotiable Instrument Act as the petitioner-accused has been ready and willing to compound the same since beginning of case. It is also prayed that this Hon'ble Court may also quash the impugned order dated 23.05.2016 passed by Trial Court/Ld. Illaqa Magistrate, Ist Class Ludhiana (P-8) vide which the application for compounding has been dismissed and order dated 31.08.2016 (P-10) passed by Court of Sh. Sandeep Singh Bajwa, Ld. ADSJ, Ludhiana vide which the revision petition i.e. CRR No. 36/2016 for compounding of offence under Section 147 of the

Negotiable Instrument Act has been wrongly rejected.”

2. Petitioner is stated to have issued a cheque to the respondent on 03.01.2013 and it was dishonoured on 23.02.2013. Consequently, respondent proceeded to initiated proceedings against the petitioner by filing complaint on 06.05.2013. On the very same day summons were issued. Petitioner has expressed his willingness to settle the respondent's amount before the trial court on two occasions. On both the occasions his application was rejected. Thereafter, he has exhausted the remedy of review also. In view of these facts and circumstances, petition is required to be allowed subject to compliance of guidelines issued in the case titled as ***Damodar S.Prabhu versus Sayed Babulal H.*** reported in 2010(5) SCC 663.

Relevant extract of 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."

3. While resisting the contention of petitioner, learned counsel for the respondent submitted that the cheque was dishonoured on 23.02.2013 and after that date he repeatedly requested petitioner to refund the cheque amount but he did not turned up. Denial of payment of cheque amount after the period of about five years is not justified at this stage. Trial court as well as revisional courts rightly rejected the petitioner's application for compound of offence.

4. Heard learned counsel for the parties.

5. Crux of the matter in the instant petition is that whether the offence under Section 138 of Negotiable Act, can be compounded without the consent of the complainant/respondent? Hon'ble Apex Court in the case of *M/s Meters and Instruments Private Limited and another versus Kanchan Mehta* reported in 2017 AIR SC 4595 held that even if there is no consent of the parties court can examine the matter and proceed to close the proceedings when no loss is going to cause the respondent. In the present case, complaint was filed on 06.05.2013 against the petitioner as cheque of Rs.35,000/- dishonoured and he fail to pay the amount. So, the offence can be compound at this stage. As respondent prayer of his harassment that is not correct, petitioner is also runing from pillar to pillar to end the matter. Therefore, in view of these factual aspects, order dated 23.05.2016 and 31.08.2016 are set aside. Petitioner is allowed to compound the offence in view of the decision of the Apex Court in *Damodar S.Prabhu's* case cited (supra). Petitioner is permitted to compound the offence before the trial

court subject to deposit of cheque amount. Interest on cheque amount @ 9% be paid to the complainant, compounding fee as per decision of **Damodar S.Prabhu's** case cited (supra) viz., 10% of the cheque amount to be deposited in District, Legal Service Authority, Ludhiana and Rs.5,000/- as litigation cost which should be paid to the respondent within a period of 3 months.

6. With the above observation, petition stands disposed of.

25.05.2018

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No