

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-6378-2017
Date of decision:1.3.2018

Arun Goyal and another

.....Petitioners

Versus

Dr. Subhash Goyal

.....Respondent

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Om Pal Sharma, Advocate
for the petitioners.

Mr. Arjun Jindal, Advocate
for the respondent.

MAHABIR SINGH SINDHU, J. (ORAL)

This petition has been filed under Section 482 Criminal Procedure Code ('Cr.P.C.' - for short) for quashing of order dated 14.2.2017 (P-5) passed by learned Additional Sessions Judge, Ludhiana vide which application dated 15.11.2016 (P-2) filed by the petitioner permitting him to deposit the cheque amount of ₹15 lakhs as per the judgment of Hon'ble Supreme Court in a case titled as **Damodar S. Prabhu Vs. Sayed Babulal H. 2010(5) SCC 663** has been rejected on the ground that complainant-respondent has not given consent for the same.

Briefly stated facts of the case are that a complaint under Section 138 of the Negotiable Instruments Act, 1881 ('Act' – for short)

was filed on account of dishonor of cheque amounting to ₹15 lakhs and ultimately the petitioners were convicted and sentenced by learned trial Court vide judgment dated 29.4.2015. An appeal was preferred and during the pendency of the appeal on 15.11.2016, an application was filed by the petitioners for seeking permission to deposit the cheque amount, but same was rejected on the ground that the complainant/respondent has not consented.

Now, during the pendency of the present petition, the matter has been compromised between the parties and cheque amount of ₹15 lacs along with 15% in lieu of costs has been deposited by the petitioners, which is duly acknowledged by respondent/complainant.

It is not in dispute that Section 147 of the Act postulates that every offence punishable under this Act is compoundable. It is now well settled principle of law that once the erring party has made the payment of entire amount, then both the parties with their consent, are entitled to compound the offence, as contemplated under Section 147 of the Act and the same is no more res-integra.

The Hon'ble Supreme Court in case **K.Subramanian Vs. R.Rajathi Represented by P.O.A.P.Kaliappan, (2010) 15 Supreme Court Cases 352** has held that under such circumstances, the parties should be permitted to compound the indicated offence and the relevant para No. 8 thereof reads as under: -

“8. Having regard to the salutary provisions of Section 147 of the Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion

that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.”

It is proved on record that the parties have compromised the matter and the petitioner-convict has already made the entire payment alongwith 15% extra in favour of Legal Services Authority, as per law laid down by the Hon'ble Supreme Court in case '**Damodar S. Prabhu (supra)**'. Thus, it would be in the interest of justice that they be allowed to compound the offence to enable them to live in peace in future. Even otherwise, there is no legal impediment in this case and the same is covered by the ratio of law laid down in the judgment of Hon'ble Supreme Court in **K. Subramanian's case (supra)**.

In view of the above, present petition is allowed and approval is granted for compounding the offence in terms of **Damodar S. Prabhu (supra)**. Since the appeal is stated to be pending before learned Lower Appellate Court, hence learned Lower Appellate Court is directed to decide the appeal taking into consideration the factum of compromise and the order passed by this Court.

Intimation be sent to the quarter concerned.

(**MAHABIR SINGH SINDHU**)
JUDGE

1.3.2018
Gaurav Sorot

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |