

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

CRR-1415-2018 (O&M)

Date of Decision: 13.12 .2018

Vinod Kumar Maggu

...Petitioner

Versus

Rajender Kumar Garg and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Dr. Anand Kumar Bishnoi, Advocate
for the petitioner.

Mr. Ashish Aggarwal, Advocate, for
Mr. Ravi Malik, Advocate,
for respondent No.1.

Mr. Ripu Daman, AAG, Haryana
for respondent No.2.

HARI PAL VERMA, J. (ORAL)

The petitioner-accused has filed the present revision petition against the judgment dated 06.04.2018 passed by learned Additional Sessions Judge, Palwal whereby, his appeal against the judgment and order of sentence dated 07.09.2016, was dismissed.

Briefly stated that the respondent-complainant filed a complaint under Section 138/139 of Negotiable Instruments Act, 1881 (for short, 'the Act') and Section 420 of IPC on the ground that the petitioner was on friendly terms with the complainant and he requested the complainant for a personal loan of ₹1 lakh. In order to discharge his liability, the petitioner-accused issued two cheques i.e Cheque No.624981 dated 29.05.2012 for an

amount of ₹50,000/- and another Cheque bearing No.624982 dated 04.06.2012 also for an amount of ₹50,000/- in favour of the complainant drawn at Syndicate Bank, Branch Palwal. However, when the complainant presented said cheques for encashment with his bank, they were returned unpaid with the remarks "Funds Insufficient" vide memos dated 04.06.2012 and 05.06.2012. In this manner, the complaint was filed.

Vide judgment dated 07.09.2016, learned Judicial Magistrate Ist Class, Palwal convicted the petitioner for an offence punishable under Section 138 of the Act and vide separate order of even date, sentenced him to undergo simple imprisonment for a period of 6 months. However, the complainant was ordered to be granted compensation of ₹1 lakh within one month from the date of order i.e. 07.09.2016.

Aggrieved against the aforesaid judgment of conviction and order of sentence dated 07.09.2016, the petitioner-accused preferred an appeal which was dismissed by learned Additional Sessions Judge, Palwal vide order dated 06.04.2018.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

While issuing notice of motion on 23.04.2018, learned counsel for the petitioner had submitted that the petitioner is ready to pay the entire amount alongwith the requisite compounding fee. Thereafter, vide order dated 19.09.2018, parties were directed to appear before the Mediation and Conciliation Centre of this Court. Before the Mediation Centre, a settlement has arrived at between the parties and the same was reduced into writing vide settlement/compromise dated 26.09.2018. The relevant part of the

settlement/compromise is read as under:-

- “a) Both the parties have decided to settle their dispute amicably. It is agreed between the parties that the first party is ready to pay Rs.1,00,000/-(Rupees One Lacs Only) to the second party by way of two demand drafts No.047136 dated 12.09.2018 and 047135 dated 12.09.2018 of Rs.50,000/- (Rupees Fifty Thousand only) each drawn on Axis Bank Ltd., Palwal. Both demand drafts have been handed over to the second party today i.e. 26.09.2018 in the Mediation and Conciliation Centre.
- c) Both the parties have agreed that they will not make nay further claim against each other.”

In view of above, the petitioner has paid an amount of ₹1 lakh by way of two demand drafts of ₹50,000/- each to the complainant and settled the matter.

At this stage, learned counsel for the petitioner submits that since the petitioner has cleared all the outstanding amount, he may be acquitted of the charges framed against him and permission to compound the offence may also be granted. He has contended that the petitioner is a poor person and earning his livelihood by driving vehicle and being financial constraint, it would be difficult for him to pay 15% of the cheque amount to the State exchequer as per the guidelines laid down by Hon'ble Supreme Court in case of ***Damodar S. Prabhu Versus Sayed Babalal H.2010 (5) SCC 663***. He has prayed that the condition to deposit of 15% of the cheque amount may be reduced while considering his poverty as he has

hardly arranged the cheque amount.

I have heard learned counsel for the parties.

In ***Damodar S. Prabhu's case (supra)***, Hon'ble Supreme Court has held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. The Apex Court has laid down the following guidelines for compounding of such like offences:

“(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.”

The Apex Court in ***Damodar S. Prabhu's case (supra)*** has further held that 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 and 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.

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Therefore, taking into consideration the ratio of law laid down

by the Apex Court in ***Damodar S. Prabhu's case (supra)*** coupled with the fact that the petitioner has paid the cheque amount of Rs.1 lakh, however, as regards the plea of the petitioner that he is a poor person and has no regular source of income, this Court finds substance in his submission and accordingly, reduce the requirement of deposit of 15% of the cheque amount to 7.5%.

Accordingly, necessary permission to compound the offence under Section 138 of the Act is accorded. The impugned judgment of conviction and order of sentence dated 07.09.2016 passed by the trial Court as well as the judgment dated 06.04.2018 passed by learned appellate Court are set aside and the petitioner is acquitted of the charge levelled against him subject to deposit of 7.5% of the cheque amount with the State Legal Services Authority, Haryana within a period of one month from today.

The present revision petition stands allowed in the above terms.

However, it is made clear that in case the petitioner fails to deposit the 7.5% of the cheque amount with the aforesaid authority within a period of one month, the present petition shall stand dismissed automatically and he shall be liable to undergo the remaining part of his sentence, as imposed by learned trial Court.

(HARI PAL VERMA)
JUDGE

December 13, 2018

Jyoti-IV

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No