

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

CRR No.1563 of 2018 (O&M).

Decided on:-02.08.2018.

Naveen Sehgal.

.....Petitioner.

Versus

State of Haryana and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Deepak Vashishth, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana

Mr. Amandeep Chhabra, Advocate
for respondent No.2.

HARI PAL VERMA, J. (ORAL)

The petitioner-accused has filed the present revision petition against the judgment dated 11.04.2018 passed by learned Additional Sessions Judge, Jind whereby his appeal filed against the judgment of conviction dated 10.06.2016 and order of sentence dated 13.06.2016 passed by learned Judicial Magistrate 1st Class, Narwana, was dismissed.

Briefly stated, the facts of the case are that the respondent No.2-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) alleging therein that the petitioner-accused in discharge of his legal liability issued a cheque bearing No.095926 dated 18.12.2012 in the sum of Rs.8,32,000/- drawn on State Bank of India, Faridabad in favour of the respondent No.2-complainant. However, when the

respondent-complainant presented the said cheque for encashment in Punjab National Bank, Narwana on 21.12.2012 and then on 12.01.2013, the same was dishonoured by the bank with the remarks “fund insufficient”. Thereafter, a legal notice dated 30.01.2013 was issued by the respondent No.2-complainant to the petitioner-accused but the petitioner failed to make the payment. As such, the complaint was filed against him.

Learned Magistrate vide judgment of conviction dated 10.06.2016 held the petitioner guilty for commission of offence punishable under Section 138 of the Act and vide order dated 13.06.2016 sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.8,50,000/-. It was ordered that in the event of the total fine being realized, a sum of Rs.8,32,000/- shall be given to the complainant as cheque amount and the remaining amount shall go to the State Exchequer as costs of proceedings. In default of payment of fine, the petitioner was further sentenced to undergo imprisonment for six months.

Aggrieved against the said judgment and order, the petitioner-accused filed an appeal before the Court of Session. Similarly, the respondent No.2-complainant also filed a cross-appeal for enhancement of sentence. Vide common judgment dated 11.04.2018, learned Additional Sessions Judge, Jind dismissed both the appeals.

It is in these circumstances, the petitioner-accused has preferred the present revision petition before this Court.

Learned counsel for the petitioner has contended that during pendency of the present revision petition, a compromise has been arrived at

between the parties and as per the said compromise, the respondent No.2-complainant has received Rs.4,00,000/- through cheque No.000068 dated 08.05.2018, whereas the remaining amount of Rs.4,32,000/- is fixed to be paid later on and a post-dated cheque bearing No.000069 dated 09.11.2018 has been handed over to the complainant. In support of his contention, he has relied upon the affidavit dated 08.05.2018 executed by respondent No.2-complainant (Annexure P-1).

Learned counsel for the petitioner has submitted that in view of compromise, permission to compound the offence may also be granted. He has further submitted that since the petitioner has cleared all the outstanding amount of the respondent, he may be acquitted of the charges framed against him.

Furthermore, he has contended that the petitioner-accused is a poor person and is required to maintain his family consisting of one daughter, one son and his wife. Even otherwise, he is working as a Draftsman in Jal Board, Delhi, but as on date, he is under suspension on account of his conviction in the present case. He is a first time offender and is facing the criminal proceedings since 14.03.2013 i.e. the date when the complaint was filed against him. Thus, he is not in a condition to pay 15% of the cheque amount to the State exchequer as per guidelines laid down by Hon'ble Supreme Court in ***Damodar S. Prabhu Versus Sayed Babalal H. 2010(2) RCR (Criminal) 851***. He has prayed that the deposit of 15% amount may be reduced to some extent.

On the other hand, learned counsel for the respondent No.2-complainant has admitted the factum of compromise arrived at between the petitioner-accused and the complainant in terms of affidavit dated 08.05.2013 (Annexure P-1) executed by the complainant. He has also submitted that he has no objection in case the offence is compounded or the petitioner is acquitted of charge framed against him.

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.

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 matter has been compromised between the parties during the pendency of the proceedings before this Court and that the petitioner being a poor person, this Court finds that ends of justice would be met, if the requirement of deposit of 15% of the cheque amount is reduced to 10% of the cheque amount.

Therefore, necessary permission to compound the offence under Section 138 of the Act is granted. The impugned judgment of conviction dated 10.06.2016 and order of sentence dated 13.06.2016 passed by the trial Court as well as the judgment dated 11.04.2018 passed by learned appellate Court are set aside and the petitioner is acquitted of the charge levelled against him subject to deposit of 10% of the cheque amount with the State Legal Services Authority, Haryana within a period of one month from today.

The fine imposed upon the petitioner, if already paid, be refunded to him as per rules.

Accordingly, the present revision petition stands allowed.

However, it is made clear that in case the petitioner fails to deposit the 10% 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.

August 02, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No