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

CRR No.185 of 2018 (O&M)
Date of Decision: 12.02.2018

Jaipal

....Petitioner

Vs

The Manager Primary Co-operative

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Neeraj Sheoran, Advocate,
for the petitioner.

Mr. Nav Mohit Singh, Advocate,
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

1. Notice of motion was issued on 30.01.2018 on the ground that the cheque amount has already been paid to the Bank.

2. Mr. Nav Mohit Singh, appeared on behalf of Bank and has admitted the factum of receiving an amount of Rs.2,31,000/- towards full and final settlement of the dues pending against the petitioner.

3. Petitioner was convicted under Section 138 of the Negotiable Instruments Act and was sentenced to undergo rigorous imprisonment for one year along with compensation of Rs.1 lac to be paid to the respondent-Bank.

4. Now since the settlement has been arrived at for the amount approximately more than double of the compensation, therefore, respondent does not wish to pursue the litigation anymore.

5. Evidently, the parties have compromised the issue and have settled it amicably. Both the parties are *ad idem* that the aforesaid understanding was without any pressure, threat or undue influence from any side.

6. Indulgence of this Court is being sought for compounding the offence in terms of Section 147 of the Negotiable Instruments Act.

7. The offence relating to dishonour of cheque is having compensatory profile and it should be given precedence over punitive mechanism. The offence is almost a civil wrong which has been clothed in criminal overtone. Therefore, priority should be given to compensatory mechanism.

8. In view of ratio of law laid down in **Kaushalya Devi Massand vs. Roopkishore Khore, 2011 (2) RCR (Criminal) 298** and **Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097**, revisional jurisdiction of the High Court can be invoked in terms of Section 401 Cr.P.C. as the same would result in bringing the ends of justice between the parties. Such an exercise would also be in consonance with the spirit of

Section 147 of Negotiable Instruments Act.

9. Since the settled amount is more than double of the amount awarded towards compensation by the Courts below, therefore, I deem it appropriate to consider waiving of 15% of the cheque amount in view of one of the condition as laid down in **Damodar S. Prabhu's case (supra)**.

10. Section 147 of the Negotiable Instruments Act does not contain any guideline or procedure for compounding of the offence. Since scheme under Section 320 Cr.P.C. cannot be followed in *stricto sensu*, therefore, the Hon'ble Apex Court has also clarified that in order to discourage chronic litigants from unduly delaying the composition of the offence under Section 138 of the Act, the scheme for imposing costs is considered to be a valid means to encourage compounding at the earliest.

11. Learned counsel for the respondent has no objection in case payment of 15% of the cheque amount in view of **Damodar S. Prabhu's case (supra)** is waived off.

12. Since the amount towards compensation has been paid to the tune of Rs.2,31,000/-, therefore, the accused has come forward reasonably and in view of above, I deem it appropriate to waive additional amount @ 15% of the cheque amount towards costs of litigation.

13. In view of above, sentence of the petitioner is

reduced to the period already undergone by him and he be released forthwith if not required in any other case.

14. Disposed of.

12.02.2018

jyoti

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No