

In the High Court of Punjab and Haryana at Chandigarh

CRR No. 1919 of 2018 (O&M)

Date of Decision: July 09, 2018

Surinder Kumar

... Petitioner

Versus

State of Punjab and another

... Respondents

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

Present: Mr. J.S. Grewal, Advocate,
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

Mr. Piyush Sharma, Advocate,
for respondent No.2.

P.B. Bajanthri, J. (Oral)

CRM No.20427 of 2017

Heard.

For the reasons stated in the application, present application is allowed. Delay of 495 days in filing the criminal revision is condoned.

CRR No. 1919 of 2018

Present criminal revision is directed against judgment dated 21.01.2017 passed by learned Additional Sessions Judge, Fazilka, dismissing the appeal filed by the petitioner against the judgment of conviction dated 13.03.2013 passed by learned Judicial Magistrate First Class, Fazilka, vide which petitioner has been convicted for an offence punishable under Section 138 of the Negotiable Instruments Act and

sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs. 5000/- and in default of payment of fine, he undergo further rigorous imprisonment for two months.

Learned counsel for the parties submitted that after order of conviction, parties have entered into compromise on 18.05.2018 in settling their claim. Learned counsel for respondent no.2 has stated that he has received all the dues. In view of the compromise read with Supreme Court's decision in the case of ***Damodar S. Prabhu vs. Sayed Babalal H.***, reported in ***(2010) 5 SCC 663***, parties are permitted to compound the offence before this Court subject to deposit of 15% of the cheque amount. 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.”

In view of these facts and circumstances read with Supreme

Court's decision of ***Damodar S. Prabhu's*** case, present revision petition is allowed. Impugned judgments and order of sentence are set aside, subject to deposit of 15% of the cheque amount with the State Legal Services Authority, Punjab within two weeks from today and petitioner, who is stated to be in custody be released, if not required in any other case.

July 09, 2018
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned: Yes

Whether reportable: No