

242.

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

**CRR-3028-2018 (O&M)**

Date of decision:01.11.2018.

RAJ RANI

... Petitioner

Versus

BALJIT KAUR

.... Respondent

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

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Present: Mr. Khusdeep S. Maan, Advocate, and  
Mr. Gurinder Singh Attariwala, Advocate,  
for the petitioner.

Mr. Rahul Bansal, Advocate,  
for the respondent.

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**HARI PAL VERMA, J.(Oral)**

The petitioner-accused has filed the present revision petition against the judgment dated 28.08.2018 passed by learned Additional Sessions Judge, Sangrur whereby her appeal filed against the judgment of conviction and order of sentence dated 08.12.2017 passed by learned Judicial Magistrate Ist Class, Dhuri, was dismissed.

Power of attorney filed on behalf of respondent in court today, is taken on record.

Briefly stated, the facts of the case are that the respondent-complainant had 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 her legal liability issued a cheque bearing No.32038423 dated 15.07.2016 for Rs.5 lakhs drawn on Union Bank of

the respondent-complainant. However, when the respondent-complainant presented the said cheque for encashment in the bank, the same was dishonoured by the bank with the remarks "Funds Insufficient". Thereafter, a legal notice dated 20.07.2016 was issued by the respondent-complainant to the petitioner-accused but the petitioner failed to make the payment. As such, the complainant filed a complaint against the petitioner under Section 138 of the Act.

Learned Magistrate vide judgment dated 08.12.2017 convicted the petitioner for offence punishable under Section 138 of the Act and vide separate order of even date, sentenced her to undergo rigorous imprisonment for a period of two years with fine of Rs.3,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month.

Aggrieved against the judgment of conviction and order of sentence, the petitioner-accused filed an appeal before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Sangrur vide judgment dated 28.08.2018 affirming the conviction.

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

Learned counsel appearing on behalf of the petitioner states that in terms of order dated 24.09.2018 passed by this Court, the petitioner was required to pay total amount of Rs.5,25,000/- and out of which, a bank draft of Rs.1,25,000/- was handed over to the respondent on 24.09.2018 itself. The petitioner has prepared two bank drafts of Rs.2 lakhs each (bearing Nos.001224 and No.504766 dated 29.10.2018 of HDFC Bank and ICICI Bank respectively) in favour of the respondent-complainant against the

and impugned judgments of conviction passed by the court below be set aside.

Learned counsel for the respondent-complainant has accepted the bank drafts and fairly states that as on date, nothing is outstanding towards the petitioner.

At this stage, learned counsel appearing on behalf of the petitioner submits that since the petitioner has cleared all the outstanding amount, she may be acquitted of the charges framed against her and permission to compound the offence may also be granted. He has contended that the petitioner is a housewife and there is no regular source of income with her. Thus, she is not in a position 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 condition to deposit of 15% of the cheque amount may be reduced while considering her poverty as she 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.

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 total agreed amount of Rs.5,25,000/- which includes Rs.5 lakh of cheque amount and Rs.25,000/- as a compensation over and above the cheque amount, this Court finds that so far as the cheque amount is concerned, that duly stands paid. However, as regards the plea of the petitioner that she is a poor lady and has no regular source of income, this Court finds substance in her submission and accordingly, reduce the requirement of deposit of 15% of the cheque amount to 5%.

Therefore, necessary permission to compound the offence under Section 138 of the Act is accorded. The impugned judgment of conviction and order of sentence dated 08.12.2017 passed by the trial Court as well as the judgment dated 28.08.2018 passed by learned appellate Court are set aside and the petitioner is acquitted of the charge levelled against her subject to deposit of 5% of the cheque amount with the State Legal Services Authority, Punjab within a period of one month from today.

The photocopies of the bank drafts submitted by the petitioner shall form part of the record.

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 5% of the cheque amount with the aforesaid authority within a period of one month, the present petition shall stand dismissed automatically and she shall be liable to undergo the remaining part of her sentence, as imposed by learned trial Court.

**(HARI PAL VERMA)**  
**JUDGE**

01.11.2018

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| Whether speaking/reasoned? | Yes/No |
| Whether reportable?        | Yes/No |