

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

**CRR No.3445-2018 (O&M)
Date of decision:10.12.2018**

Jahoor Khan

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Rajesh Lamba, Advocate, for the petitioner.

Mr. Vijesh Sharma, DAG, Haryana.

Mr. Ajay Jain, Advocate for
Ms. Shelja Sharma, Advocate
for respondent No.2-complainant.

RAJBIR SEHRAWAT, J. (ORAL)

Jahoor Khan-accused has directed the present revision petition against the judgment dated 10.07.2018 passed by learned Additional Sessions Judge, Faridabad, vide which, the appeal preferred by the petitioner-accused was dismissed in default for want of prosecution and order dated 05.10.2018 passed by learned Additional Sessions Judge, Faridabad, vide which the application for restoration of the criminal appeal has been dismissed as well as the judgment of conviction dated 06.10.2016 and order of sentence dated 12.10.2016, passed by Judicial Magistrate 1st Class, Faridabad, whereby the petitioner was convicted under Section 138 of the Negotiable Instrument Act, (in short- the NI Act) and sentenced to undergo simple imprisonment for a period of 06 months.

On 11.10.2018, the following order was passed by this Court:-

*“ This is an application filed under Section 147 of
NI Act for compounding of the offence.*

Counsel for the applicant- petitioner submits that

the parties have entered into a compromise and they have agreed for compounding of the offence. It is submitted that the applicant-petitioner has already made payment of Rs.1,35,000/- in cash to respondent No.2 and he has brought a demand draft No.348612 for an amount of Rs.65,000/-.

Notice of motion.

Mr. Surender Singh, AAG, Haryana, accepts notice on behalf of the State.

Ms. Shelja Sharma, Advocate appears for the complainant, and being instructed by the complainant who is present in the Court, does not dispute the fact that the amount of Rs.1,35,000/- has already been paid in cash and that the parties have compounded the entire matter for an amount of Rs.2 lacs. The original demand draft mentioned above is handed over to the complainant in the Court.

Let the parties now appear before the trial Court/Illaqa Magistrate on 25.10.2018 or any other date convenient to the Court for recording their statements with regard to compromise. The trial Court/Illaqa Magistrate is directed to record the statements of both the parties to its satisfaction to know its genuineness that the statements are not the result of any pressure or coercion in any manner. The trial Court/Illaqa Magistrate is also directed to send a report along with statements of the parties with regard to validity or otherwise of the compromise effected between the parties and also intimate whether any criminal proceedings are pending against either of the parties or not, before the next date of hearing.

*However, it is clarified that before appearing for the trial Court/ Illaqa Magistrate for making the statements, the applicant-petitioner shall deposit an amount of Rs.20,000/- as compounding charges with District Legal Services Authorities, Faridbad in terms of the judgment of the Supreme Court rendered in **Damodar S. Prabhu v. Sayed Babalal H., 2010 AIR (SC) 1907**. The amount has been reduced a little bit*

by this Court, keeping in view the economic condition of the petitioner.

Adjourned to 10.12.2018.

CRM No.36576 of 2018

This is an application filed under Section 397 Cr.P.C seeking suspension of sentence.

Since the parties have agreed for compounding of the offence, therefore, it would be appropriate to permit the petitioner to be released on interim bail to arrange the necessary funds and to make the statements before the trial Court/ Illaqa Magistrate. Therefore, it is directed that the petitioner be released on interim bail till the next date of hearing on his furnishing bonds/ sureties to the satisfaction of the Trial Court/ Duty Magistrate. ”

In pursuance to the above order, learned counsel for the petitioner has submitted that the petitioner has deposited an amount of Rs.20,000/- as compounding charges with District Legal Services Authority, Faridabad in terms of the judgment of the Supreme Court rendered in ***Damodar S. Prabhu v. Sayed Babalal H., 2010 AIR (SC) 1907.***

Learned counsel for the complainant submits that he has received entire payment and nothing remains due with the accused and he has no objection if the petitioner is acquitted of charge and released from jail.

Vide order dated 11.10.2018, the parties were directed to appear before the trial Court/Illaqua Magistrate, for getting their statements recorded; as to the genuineness of the compromise. In compliance thereof, report of Judicial Magistrate 1st Class, Faridabad, dated 01.11.2018, has been received, wherein, it has been noticed that the petitioner has deposited Rs.20,000/- in District Legal Services Authority, Faridabad and the matter has been effected between the parties without any threat or pressure, undue influence, voluntarily. No criminal proceedings are pending against either of the parties.

The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death penalty for criminal acts.

However more often than not the civil disputes or inter-se conflicts of two parties transforms themselves into criminal aspect. Therefore, the legal system plays empire to resolve the conflict between two parties; with the added task of ensuring that the adverse impact of dispute qua society at large is minimized. But still the core idea is to resolve the conflict between two sides by putting it to rest. Therefore, even the criminal law is required to give due regard to the wishes of the parties to dispute. Recognizing this principle only, the Indian legal System also provides for recognizing the compromise between two sides of a criminal dispute. Section 320 Cr.P.C. is an express provision in this regard. This section not only provides for compounding during the trial, but permits compounding even at appellate or revisional stage. However by its very nature and scope, Section 320 Cr.P.C. cannot be the sole repository; wherein the recognition to a compromise between the parties have; necessarily; to be confined. This section relates only to the offences prescribed

under the Indian Penal Code. There are a lot more offences prescribed outside IPC. Even to the offences existing in the IPC new dimensions are added from time to time, making the existing offences to be lighter or stringent and even new modalities of proof of offences are being recognised in view of technological advancement. This necessitates and requires the need for looking beyond Section 320 Cr.P.C. to recognise the compromise between the parties to dispute. But to maintain the sanctity of the procedure prescribed for criminal trial; the Trial Court cannot be permitted to travel beyond the scope prescribed under that procedure. Hence the need for invoking Section 482 Cr.P.C. by the High Court.

But, as observed above, the wishes of only parties to the criminal dispute would not always be sufficient to terminate a criminal trial in view of the patent, latent or subtle effect; their conduct would have left qua the society at large. Therefore the offences committed by persons involved in governance or administration for acquiring official power or while exercising office power cannot be permitted to be compromised. Likewise, even the offences involving only two private persons, but reflecting depravity of character or involving causing intentional loss of life or causing intentional loss of property by extending imminent threat of loss of life; cannot be permitted to be compromised. Except the above mentioned grave offences, there is every reason that all other offences should be permitted to be compromised by the Court. Since the proof of offences before the Court, again would involve the conduct of the parties to dispute, therefore if the Court does not permit the same to be compromised then the parties would tend to play tricks upon the Court to ensure the acquittal of accused by subverting the administration of criminal justice. And it is never in the interest of administration of criminal justice to force the citizen to learn and adopt the tricks designed to be played

upon Courts to subvert the justice system. So it would always be in the interest of justice itself; that the compromise between the parties is recognized and the citizen remain moored and committed to the essentials of the system of administration of justice, at least, qua those offences, which the interest of society does not permit to be compromised.

Hon'ble the Supreme Court has amply clarified the legal position on recognizing compromising in the case of ***Gian Singh Vs. State of Punjab and another, 2012(4) RCR (Criminal) 543***, and has observed as under:-

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that

capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

The present case does not fall in anyone of the exceptions envisaged above. Hence, in view of the report of Judicial Magistrate 1st Class, Faridabad, dated 01.11.2018 made in pursuance of the order dated 11.10.2018 passed by this Court, the Court feels that no useful purpose would be served by keeping the proceedings alive. It will be in the interest of justice, if the settlement reached between the parties is accepted.

Accordingly, the present petition is allowed. The complaint under Section 138 of the NI Act and all consequential proceedings arising therefrom along with the judgment dated 10.07.2018 passed by learned Additional Sessions Judge, Faridabad; the order dated 05.10.2018 passed by learned Additional Sessions Judge, Faridabad as well as the judgment of conviction dated 06.10.2016 and order of sentence dated 12.10.2016, passed by Judicial Magistrate 1st Class, Faridabad, are hereby quashed qua the present petitioner on the basis of compromise arrived at between the parties.

(RAJBIR SEHRAWAT)
JUDGE

10.12.2018
hemlata

Whether speaking/reasons	Yes/No
Whether Reportable	Yes/ No