

242.

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

**CRR-918-2018**

Date of decision:19.07.2018.

RAM KUMAR

... Petitioner

Versus

STATE BANK OF INDIA AND ANR.

.... Respondents

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

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Present: Mr. Jayoti Parshad Sharma, Advocate,  
for the petitioner.

Mr. S.S. Pathania, Advocate,  
for respondent No.1.

Mr. Anmol Malik, AAG, Haryana,  
for respondent No.2.

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

The petitioner-accused has filed the present revision petition under Section 401 Cr.P.C. impugning the judgment dated 27.02.2018 passed by learned Additional Sessions Judge, Karnal, whereby his appeal against the judgment of conviction and order of sentence dated 21.10.2014 and 28.10.2014 respectively passed by learned Judicial Magistrate Ist Class, Karnal, was dismissed.

Pursuant to order dated 21.05.2018 passed by this Court, Shri P.K. Mehta, Manager of State Bank of India, is present in Court.

Briefly stated, the facts of the case are that the respondent complainant i.e. Bank filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) alleging therein that on

₹50,000/- for repair of his house from the respondent-Bank. But the accused did not pay his loan amount and interest thereon, as per the repayment schedule. It was in discharge of his legal liability, accused issued a cheque bearing No.558002 dated 13.04.2012 for a sum of ₹72,278/- drawn at State Bank of India, Indri in favour of the respondent-complainant. However, when the respondent-complainant presented the said cheque for encashment with its banker, the same was returned unpaid with the remarks “insufficient funds” vide memo dated 13.04.2012. Thereafter, a legal notice dated 19.04.2012 was issued by the respondent-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 and order of sentence dated 21.10.2014 and 28.10.2014 respectively, convicted the petitioner for offence punishable under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of three months and to pay fine to the tune of ₹1,44,556/- i.e. double the cheque amount as compensation to the complainant.

Aggrieved against the said judgment and order, the petitioner accused filed an appeal before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Karnal vide judgment dated 27.02.2018.

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

Learned counsel for the petitioner states that the petitioner has settled the account with the Bank under the One Time Settlement Scheme,

reveals that as on 31.05.2017, an amount of ₹43,377/- was outstanding against the petitioner which has been settled at ₹34,000/- under the OTS scheme. The said settlement voucher is taken on record.

Learned counsel for petitioner further contends that the petitioner is a poor person and is a labourer by profession. He hardly manages to make ends meet. He has repaid the amount of ₹34,000/- to the Bank by borrowing it from his friends and relatives. He is a first time offender and is facing present criminal proceedings since 18.05.2012 i.e. the date when the complaint was filed against him. He is not in a condition to pay 15% of the cheque amount to the State exchequer as per the 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-Bank on instructions from Mr. Mehta, Manager of the Bank, has admitted that under the provisions of OTS Scheme for the year 2017-18, the petitioner-accused has repaid the outstanding amount and discharged his liability. He has further submitted that they have no objection in case the offence is compounded or the petitioner is acquitted of the 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:

*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 and order of sentence dated 21.10.2014 and 28.10.2014 respectively passed by the trial Court as well as the judgment dated 27.02.2018 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 i.e. ₹7,200/- 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.

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

19.07.2018  
sanjeev

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