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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 12.04.2018

+ CRL.REV.P. 769/2017

R B SURI

..... Petitioner

versus

STATE & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Viraj Kadam, Advocate

For the Respondent : Ms. Anita Abraham, APP for the State.
Ms. Parveen Rawal with Ms. Usha Singh,
Advocates for R-2

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

12.04.2018

SANJEEV SACHDEVA, J. (ORAL)

CRL.REV.P. 769/2017

1. Petitioner impugns order dated 18.09.2017 of the Appellate Court, whereby the appeal filed by the petitioner impugning the judgment dated 16.05.2017 and order on sentence dated 17.05.2017 was dismissed.

2. Respondent no.2 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 qua a cheque in the sum of Rs.2,60,000/-.

3. Petitioner was sentenced to undergo imprisonment for a period of two years with fine of Rs. 5,20,000/- i.e. double the cheque amount and in

lieu thereof to undergo further six months' imprisonment.

4. Petitioner has already undergone three months of the substantive sentence. He has deposited the fine amount of Rs. 5,20,000/- with the Trial Court.

5. Learned counsel for the petitioner submits that the petitioner is aged 77 years and does not have family to support him at this age and had retired as a Jawan from the Indian Army and is surviving solely on his pension. Learned counsel further submits on account of his age and health conditions, he is not in a position to take up an employment to augment his income.

6. Further, learned counsel for the petitioner submits that noticing the special facts and circumstances of the present case, the subject offence be compounded and petitioner be not directed to deposit the entire costs 15% of the amount, as directed by the Supreme Court in *Damodar S. Prabhu vs Sayed Babalal H:* 2010 (5) SCC 663:. Learned counsel relies on Para 24 and 25 of the said judgment to contend that there are special circumstances existing wherein this Court should exercise discretion and impose lower costs.

7. Parties have settled their disputes.

8. Respondent no. 2 is agreeable to compounding of offence on receipt of the said amount of Rs. 5,20,000/-.

9. **Paras 24 and 25 of *Damodar S. Prabhu (supra)* read as under:**

"24. We are also conscious of the view that the judicial endorsement of the abovequoted Guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 CrPC cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act.

25. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. 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. 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. Bona fide litigants should of course contest the proceedings to their logical end."

(underlining supplied)

10. Keeping in view the fact that petitioner is aged 77 years and does not have family to support him and is a retired Jawan from the Indian Army and surviving solely on his pension and further keeping in view his age and health conditions and the fact that he is not in a position to take up an employment to augment his income, in my view it is a fit case for exercise of discretion in terms of paras 24 and 24 of *Damodar S Prabhu* (supra) to

reduce the costs.

11. In view of the settlement between the parties, subject offence is compounded in exercise of powers under Section 147 of the Negotiable Instruments Act, 1881. The Trial Court is directed to release the amount of Rs. 5,20,000/- to respondent no. 2.

12. The interest accrued on the said amount of Rs. 5,20,000/- be remitted by the Trial court to Delhi State Legal Services Authority, towards costs for compounding. Further, petitioner shall also pay another sum of Rs. 10,000/- as costs to Delhi State Legal Services Authority within a period of two weeks from today.

13. In terms of the above directions, the subject offence is compounded. The petitioner is acquitted of the offence.

14. Order *Dasti* under signature of the Court Master.

SANJEEV SACHDEVA, J

APRIL 12, 2018

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