

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 392 of 2019**

Ashok PanchBhai S/o Kashiram PanchBhai, aged about 57 years, R/o E-3, L.I.C. Colony District Raipur, Chhattisgarh.

---- Petitioner

Versus

State Bank of India, Through Manager, Ambikapur Branch PPD, Ambikapur, Chhattisgarh.

----Respondent

For Petitioner	:	Mr. Anurag Jha, Advocate
For Respondent	:	Mr. P.R. Patankar, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17.07.2019**

1. The question for consideration in the present writ petition under Article 227 of the Constitution of India would be as under :-

“Whether in a Lok Adalat, the requirement of payment of 15% of the cheque amount by way of cost in appeal, while compounding the offence punishable under Section 138 of the Negotiable Instruments Act, as directed by the Supreme Court in ***Damodar S. Prabhu Vs. Sayed Babalal H.***¹, can be dispensed with on making out a plausible case for waiver / reduction of the cost ?”

2. The petitioner herein was convicted by learned Judicial Magistrate 1st Class, Ambikapur vide order dated 28/11/2018 for

¹ (2010) 5 SCC 663

offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter “the NI Act”) with rigorous imprisonment of six months and he was also directed to pay a compensation to the extent of Rs. 1,70,000/- under Section 357 (3) of the Cr.P.C. Questioning the said order, the petitioner herein preferred an appeal before the Court of Session. Learned 1st Additional Sessions Judge, Ambikapur, by its order dated 14/12/2018, directed the petitioner to deposit 50 % of the awarded amount of compensation, while suspending his sentence. The order of the Sessions Judge was further challenged by the petitioner before this Court in Cr.M.P. No. 325/2019, in which he remained unsuccessful. Thereafter, the petitioner preferred an application before the appellate Court for compromising the matter, which was ultimately referred to the Lok Adalat.

3. Lok Adalat, by its order dated 20/04/2019, rejected the application of the petitioner holding that following the guidelines particularly in paragraph 15 (c) of *Damodar S. Prabhu (supra)* i.e. depositing 15 % of the cheque amount by way of cost while accepting the application for compounding is mandatory. Challenging the order of the Lok Adalat, the petitioner has preferred the present writ petition before this Court.
4. Mr. Anurag Jha, learned counsel for the petitioner submits that the order passed by the Lok Adalat is in teeth of the decision rendered by the Supreme Court in ***Damodar S. Prabhu Vs. Sayed BaBalal H.*** as also in ***Madhya Pradesh State Legal Services Authority Vs. Prateek Jain & Anr.***².

² 2014 (10) SCC 690

5. Mr. P.R. Patankar, learned counsel for the respondent submits that the entire cheque amount has been deposited by the petitioner with the Bank and the Bank is satisfied by the amount deposited by him. As such, the petitioner has made out a case for accepting the application for compounding the offence under Section 138 of the NI Act.

6. I have heard learned counsel for the parties, considered their submissions made herein-above and went through the records with utmost circumspection.

7. The Supreme Court, in the matter of *Damodar S. Prabhu* (supra) has framed guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. Paragraph 15 (c) of the afore-mentioned decision is appropriate for the present case and is quoted below :-

“15. (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.”

8. The principle laid down by the Supreme Court in the matter of *Damodar S. Prabhu* (supra) was further considered by their Lordships of the Supreme Court in the matter of ***Madhya Pradesh State Legal Services Authority Vs. Prateek Jain & Anr.*** where the issue for consideration was whether requirement of deposit by way of cost can be waived/reduced when a case is decided/settled in the Lok Adalat? Their Lordships have answered the issue in Paragraph 23 of the said judgment which states under :-

“ 23. Having regard thereto, we are of the opinion that even when a case is decided in Lok Adalat, the requirement of following the guidelines contained in Damodar S. Prabhu (supra) should normally not be dispensed with. However, if there is a special/specific reason to deviate therefrom, the Court is not remediless as Damodar S. Prabhu (supra) itself has given discretion to the concerned Court to reduce the costs with regard to specific facts and circumstances of the case, while recording reasons in writing about such variance. Therefore, in those matters where the case has to be decided/settled in the Lok Adalat, if the Court finds that it is a result of positive attitude of the parties, in such appropriate cases, the Court can always reduce the costs by imposing minimal costs or even waive the same. For that, it would be for the parties, particularly the accused person, to make out a plausible case for the waiver/reduction of costs and to convince the concerned Court about the same. This course of action, according to us, would strike a balance between the two competing but equally important interests, namely, achieving the objectives delineated in Damodar S. Prabhu (supra) on the one hand and the public interest which is sought to be achieved by encouraging settlements/resolution of case through Lok Adalats. ”

9. As such, it is quite vivid from the above-stated legal position that if the accused person makes out a case for waiver / reduction of the costs and the concerned Lok Adalat is convinced, the cost as mandated in *Damodar S. Prabhu* (supra) can be waived/reduced.

10. In the present case, the total cheque amount is 1,70,000/- out of which 85,000/- has already been deposited by the petitioner in compliance of the order passed by learned Sessions Court as affirmed by this Court on 08/02/2019 and the remaining amount of 85,000/- has been deposited by him on 20/04/2019,

showing his bonafide and his intention to bring the litigation to an end, which the Bank has graciously accepted, and has already been reiterated before this Court during the course of the hearing that the Bank is satisfied on deposit of entire cheque amount to give quietus to litigation pending. Thereby, the petitioner has made out a case for waiver of 15% of the cost as mandated in the matter of *Damodar S. Prabhu* (supra).

11. Accordingly, the impugned order is set aside. The application for compounding of offence under Section 138 of the NI Act is accepted since, the entire cheque amount has already been deposited with the Bank and the Bank has accepted that amount, and the accused/petitioner is acquitted for the offence under Section 138 of the NI Act in complaint case No. 102/2010 (*State Bank of India Vs. Ashok Panchbhai*) by learned 1st Class Judicial Magistrate, Ambikapur and the conviction awarded as well as the sentence imposed upon him are hereby set aside.
12. With the aforesaid observations, this writ petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 392 of 2019****Petitioner**

Ashok PanchBhai

Versus**Respondent**

State Bank of India

(English)

Lok Adalat can waive/reduce the amount of cost as mandated in Damodar S. Prabhu Vs. Sayed Babalal H. on making out a good case.

(हिन्दी)

अच्छा प्रकरण बनने पर दामोदर एस. प्रभू विरुद्ध सैय्यद बाबालाल एच में किये गये विनिश्चय अनुसार लोक अदालत शास्ति की रकम को माफ़/कम कर सकती है ।