

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

**CRR No.595 of 2019 (O&M)
Date of Decision: 12.02.2020**

Iqbal Singh

.....Petitioner

Vs

HDFC Bank Limited

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. C.S. Jattana, Advocate,
for the petitioner.

Mr. Saurabh Bhardwaj, Advocate,
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1] Petitioner has assailed the judgment dated 21.02.2019 and 15.03.2018 passed by Additional Sessions Judge, Bathinda and Judicial Magistrate Ist Class, Bathinda, respectively vide which the petitioner was convicted and sentenced under Section 138 of Negotiable Instruments Act.

[2] Vide order dated 09.04.2019, the matter was referred to Mediation and Conciliation Centre of this Court when the learned counsel for the petitioner showed his readiness and willingness to settle the account. Before the Mediation and

Conciliation Centre of this Court all accounts have been settled on following terms and conditions:-

- “1. That the first party will now pay a sum of Rs.34 Lacs to the second party towards discharged of their total liability out of which a sum of Rs.21Lacs already stands paid to the second party which is admitted by the second party as well and the balance amount of Rs.13Lacs will be paid by the first party to the second party on or before 29.7.2019.*
- 2. That after the receipt of the balance amount of Rs.13 Lacs the second party will issue No Objection Certificate/No Dues Certificate closing the Cash Credit Limit Account no.14588040001341 and Term Loan Account No.80361305.*
- 3. That the second party after the receipt of balance amount will not execute an Ex-parte Arbitration Award which was passed in Ex-parte recovery proceedings initiated by them.*
- 4. That the second party further agrees that they have no objection if the conviction and sentence recorded by the Ld. Judicial Magistrate, Ist Class, Bathinda and upheld by the orders passed by Ld. Additional Sessions Judge, Bathinda vide judgment dated 15.3.2018 and 21.2.2019 are set aside in view of the present compromise.*
- 5. The second party further agrees that after the receipt of balance amount of Rs.13Lacs they will have*

no other claim against moveable and immovable properties of the first party and further no new claim shall be raised by them against the first party qua above mentioned Loan Accounts.

6. This compromise has been arrived at between the parties without any pressure, undue influence or misrepresentation and both the parties have agreed to abide by the terms and conditions of the agreement. Both the parties shall be bound with the terms and conditions of this compromise.

7. It has been further agreed between the parties, that in case of breach of this settlement by either of the parties, then the respective parties shall be entitled to move appropriate application for seeking revival of their respective litigations, including filing of appropriate litigation before the Court of competent jurisdiction.

8. It has been further decided between the parties that in case of necessity, both the parties shall be free to present the copy of the above compromise before any authority or court if the same is required to witness the execution of the compromise or to settle any pending controversy between the parties.

9. The parties have gone through the contents and the same have been explained to the parties

and after admitting the same as correct, have put their respective signatures along with their counsels who have identified them.”

[3] On 04.07.2019, both the parties were ad idem that nothing survives between the parties as the petitioner had settled the account to the entire satisfaction of the respondent bank as per the compromise.

[4] Learned counsel for the respondent has no objection in case this revision petition is disposed of in terms of compromise.

[5] Out of total sentence, the petitioner has already undergone 1 month and 10 days of actual sentence as on date.

[6] Learned counsel for the petitioner by relying upon **Cochin Hotels Co.(P) Ltd. and others Vs. Kairali Granites and others, 2006(2) RCR (Criminal) 333** and **K. Subramanian Vs. R. Rajathi represented by POAP Kaliappan, 2010 (1) RCR (Criminal) 184** contended that even after finalization of judgment of conviction and order of sentence, petitioner can resort to compounding mechanism in terms of Section 147 of Negotiable Instruments Act as the offence related to dishonouring of cheque is having compensatory profile and it should be given precedence over punitive mechanism. Offence is almost a civil wrong which has been clothed in a criminal

overtone, therefore, the priority should be given to compensatory mechanism.

[7] Learned counsel also relied upon **Damodar S. Prabhu vs. Sayed Babalal H.(supra) Kaushalya Devi Massand vs. Roopkishore, 2011(2) RCR (Criminal) 298** and contended that the compromise in question would definitely go in long way to strengthen the mutual relationship between the parties and would serve as an ever lasting tool in their favour. This exercise would be in consonance with the spirit of Section 147 of the Negotiable Instruments Act as endorsed in **Damodar S. Prabhu's case (supra)**.

[8] For the reasons recorded hereinabove, I deem it appropriate to dispose of the present revision petition in terms of compromise consequently the impugned orders are set aside.

[9] So far as 15% of the cheque amount in terms of ratio of **Damodar S. Prabhu's case (supra)** is concerned, I am of the view that Section 147 of the Negotiable Instruments Act does not contain any guideline or procedure for proceeding with the compounding of the offences. Since scheme under Section 320 Cr.P.C cannot be followed in *stricto sensu*, therefore, Hon'ble Apex Court has also clarified that in order to discourage chronic litigants from delaying the composition of the offence under Section 138 of the Act, the scheme for imposing costs is

considered to be a valid means to encourage compounding at the earliest. Valuable time of the Court is also involved in the trial of the cases and the parties are not liable to pay any Court fee in such proceedings, even though the impact of the offence is largely confined to the private parties. The imposition of costs would be a matter of discretion of the Court.

[10] In view of the fact that the parties have resolved their differences in the Mediation and Conciliation Centre of this Court and the bank is fully satisfied after settling the accounts with the petitioner, therefore, in view of the nature of litigation fought by the parties, I am of the view that 15% of the cheque amount towards cost(s) of litigation can be waived off in the interest of justice.

[11] In view of above, impugned judgments/order(s) are set aside. Petitioner is allowed to compound the offences in terms of Section 147 of the Negotiable Instruments Act. This criminal revision is allowed in terms of compromise.

February 12, 2020*geeta***(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No