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

**CRR No.1325 of 2011(O&M)
Date of Decision: 17.01.2020**

Mahavir Prasad .....Petitioner

Versus

Mohender Singh .....Respondent

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

Present: Mr. Jaiveer Singh Malik, Advocate
for the petitioner.

Mr. Naveen Sheokand, Advocate
for the respondent.

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<u>RAJ MOHAN SINGH, J.</u>

[1]. The present criminal revision has arisen from the judgment dated 03.05.2011 passed by Additional Sessions Judge, Bhiwani, confirming and upholding the judgment of conviction dated 07.02.2011 and order of sentenced dated 09.02.2011 passed by the Chief Judicial Magistrate, Bhiwani.

[2]. Petitioner was held guilty for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act') and was sentenced to undergo simple imprisonment for a period of six months under Section 138 of the Act and also to pay

compensation to the tune of Rs.1,00,000/- to the complainant under Section 357 Cr.P.C within a specified period.

[3]. The present criminal revision was admitted on 02.06.2011. The sentence was suspended during pendency of the criminal revision. Petitioner was directed to be released on bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Bhiwani, provided he deposits half of the cheque amount i.e. Rs.50,000/- payable to the respondent. Thereafter, in due course, the matter was listed before the Co-ordinate Bench on 29.11.2018 and following order was passed:-

> *"The petitioner was convicted under Section 138 of the Negotiable Instruments Act on account of dishonouring of the cheque issued by him in the sum of Rs.1,00,000/- in the name of the respondent-complainant and sentenced to undergo simple imprisonment for a period of six months. He was also directed to pay compensation to the tune of Rs.1,00,000/- to the complainant.*
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> *Aggrieved of the same, the petitioner preferred an appeal but the same was dismissed. Still not satisfied, he filed the present revision which was admitted on 2.6.2011 and he was ordered to be released on bail subject to his depositing half of the cheque amount i.e. Rs.50,000/-.*
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> *Learned counsel for the petitioner states that the petitioner has already deposited half of the cheque*

amount i.e. Rs.50,000/-. However, he has no instructions about the depositing of the remaining cheque amount by the petitioner.

Let notice be issued to the petitioner for 13.12.2018 to show cause as to why the order passed by this Court on 2.6.2011 while releasing him on bail be not recalled."

[4]. Thereafter, the compromise was effected between the parties on 22.01.2019. Respondent has admitted that he has received full and final balance amount of loan including the amount of cheque No.170101 from the petitioner on 22.01.2019. Now, nothing is due towards the petitioner.

[5]. Complainant has also given his consent to the effect that he has no objection in case, this criminal revision is decided on the basis of compromise as he does not want to proceed with the case anymore. He also pleaded no objection if the petitioner gets the amount refunded from the High Court.

[6]. During course of arguments, learned counsel for the respondent has reiterated the factum of compromise before this Court as well.

[7]. Apparently, both the parties settled the dispute amicably by way of compromise.

[8]. In view of ratio laid down in ***Kaushalya Devi Massand Vs. Roopkishore Khore, 2011(2) RCR (Criminal) 298*** and ***Damodar S. Prabhu Vs. Sayed Babalal, AIR 2010 (SC) 1097***,

the revisional jurisdiction of the High Court in terms of Section 401 Cr.P.C can be exercised, which would result in bringing the ends of justice between the parties. These powers would also be in consonance with the spirit of Section 147 of the Negotiable Instruments Act.

[9]. 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. The Court in a given case can reduce the costs as regards the specific facts involved therein, of course reasons are to be recorded for such a variance.

[10]. In the present case, taking into consideration the time and the manner in which the litigation was fought, I am of the

view that 15% of the cheque amount towards cost 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 offence in terms of Section 147 of the Negotiable Instruments Act. This criminal revision is allowed in terms of compromise.

17.01.2020 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**