

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

(1.)

CRR-120-2019.

Date of Decision:-16.11.2021.

M/s Shiva International through its Prop. Shyam Sunder Bansal and another

.....Petitioners

Versus

Balvir Singh Multani and another

.....Respondents

(2.)

CRR-115-2019.

M/s Balaji Enterprises through its Prop. Hitesh Bansal and another

.....Petitioners

Versus

Sonia Multani and another

.....Respondents

(3.)

CRR-116-2019.

M/s Balaji Enterprises through its Prop. Hitesh Bansal and another

.....Petitioners

Versus

Sonia Multani and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. N.P. Bhardwaj, Advocate and
Ms. Kajal Saini, Advocate for the petitioners.

Mr. K.L. Kohli, Advocate for respondent No.1.

Ms. Vasundhara Dalal Anand, APP, U.T.,
Chandigarh, for respondent No.2

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(in CRR Nos.115 and 116 of 2019).

VIKAS BAHL, J. (Oral)

This common order shall dispose of all the three criminal revision petitions i.e. CRR-120-2019, filed by M/s Shiva International through its Proprietor Shyam Sunder Bansal Vs. Balvir Singh Multani and U.T. Chandigarh and CRR-115-2019 and CRR-116-2019 both filed by M/s Balaji Enterprises through its Proprietor Hitesh Bansal and Hitesh Bansal Vs. Sonia Multani and U.T. Chandigarh.

Mr. Balvir Singh Multani and Sonia Multani, who are the complainants/respondents in the above said cases are husband and wife. Hitesh Bansal, proprietor of M/s Balaji Enterprises is the son of Shyam Sunder Bansal, who is the proprietor of M/s Shiva International. Complaint No.1527 of 2016 was filed by Balvir Singh Multani against Ms/ Shiv International and Shyam Sunder Bansal with respect to the dishonor of cheque No.018873 dated 07.12.2015 for a sum of Rs.17,325/- drawn on Bank of Maharashtra, Sector 47-C, Chandigarh in which the Judicial Magistrate First Class, Chandigarh vide judgment dated 21.07.2017 convicted the above-said Shyam Sunder Bansal and M/s Shiva International under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act of 1881) and sentenced Shyam Sunder Bansal to undergo rigorous imprisonment for a period of 06 months and also directed them to pay compensation of the amount of Rs.17,325/-. The Criminal Appeal No.471, filed by the above-said M/s Shiva International and Shyam Sunder Bansal, was then dismissed by the Additional Sessions Judge, Chandigarh vide

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judgment dated 08.01.2019. Against the said orders, CRR-120-2019 has been filed by the petitioners for setting aside the judgment and sentence of conviction.

Complaint No.1526 of 2016 was filed by Sonia Multani against M/s Balaji Enterprises and its proprietor Hitesh Bansal for the dishonor of cheque No.020510 dated 07.12.2015 for a sum of Rs.17,325/- drawn on Bank of Maharashtra, Sector 47-C, Chandigarh and the Judicial Magistrate First Class, Chandigarh vide judgment dated 21.07.2017 passed an order of conviction under Section 138 of the Act of 1881 and sentenced Hitesh Bansal to undergo rigorous imprisonment for a period of 06 months and also directed them to pay compensation of the amount of Rs.17,325/-. The criminal appeal No.476 of 2017 filed against the said order was dismissed by the Additional Sessions Judge, Chandigarh vide judgment dated 08.01.2019. Against the said judgments, CRR-115-2019 has been filed.

Complaint No.383 of 2016 was filed by Sonia Multani against M/s Balaji Enterprises and its proprietor Hitesh Bansal for the dishonor of cheque bearing No.020508 dated 07.11.2015 and cheque No.020509 dated 17.12.2015, amounting to Rs.37,125/- each, both drawn on Bank of Maharashtra and the Judicial Magistrate First Class, Chandigarh vide judgment dated 21.07.2017 had convicted the said accused under Section 138 of the Act of 1881 and sentenced Hitesh Bansal to undergo rigorous imprisonment for a period of 06 months and had also directed them to pay a compensation of an amount of Rs.74,250/-. Criminal Appeal No.477 of 2017 filed against the said judgment was then dismissed by the Additional Sessions Judge, Chandigarh, vide judgment dated 18.01.2019. It is the said

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two judgments which are being challenged in CRR-116-2019.

During the pendency of these connected cases, the matter was referred to the Mediation and Conciliation Centre of this Court as Mediation Case No.627-A of 2021 and settlement/agreement has been arrived at between the parties. The relevant portion of the same is reproduced hereinbelow:-

***“MEDIATION AND CONCILIATION CENTRE OF
PUNJAB AND HARYANA HIGH COURT, CHANDIGARH***

Mediation Case No. 627-A of 2021

Re:CRR- 115 of 2019

***M/s Balaji Enterprises and Another Vs. Sonia
Multani***

CRR-No. 116 of 2019

***M/s Balaji Enterprises and Another Vs. Sonia
Multani***

CRR No. 120 of 2019

***M/s Shiva Enterprise and another Vs.
Balvir Multani***

SETTLEMENT/AGREEMENT

This SETTLEMENT/AGREEMENT is entered into between

*1. Hitesh Bansal aged 34 years S/o Shyam Sunder Bansal, Prop. Of M.s
Balajit Enterprises, R/o H.No. D003, Maya Garden, Phase- I VIP Road,
Zirakpur, District Mohali*

*2. Shyam Sunder Bansal, aged 66 years , R/o H.No. D003, Maya
Garden, Phase- I VIP Road, Zirakpur, District Mohali*

... First Party

AND

*1. Sonia Multani W/o Balbir Singh Multani R/o H.No. 2016, Phase- VII,
Sector 61, Mohali.*

2. Balvir Singh Multani R/o H.No. 2016, Phase- VII, Sector 61, Mohali.

(Represented through his wife – Sonia Multani)

...Second Party

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on this day of 11th October 2021

WHEREAS

- 1. The applicant – petitioner convicted under Section 138 Negotiable Instrument Act and petitioner No.2 Shyam Sunder Bansal was sentenced to undergo imprisonment for a period of 6 months. The cheque which was dishonored No.018873 was dated 17.12.2015 and was directed to pay a compensation under Section 357(3) Cr.P.C., to the complainant/ respondent an amount equivalent to the cheque i.e. Rs.17,325/- (Rupees Seventeen Thousand and Three Hundred Twenty Five). The amount was deposited in the shape of the demand draft before the Lower Court.*
- 2. Further two Cheques bearing No. 020508 and 020509 for an amount of Rs.37,125/- respectively were also given by the first party - Hitesh Bansal to the second party Sonia Multani were also dishonored and payment for both the cheques i.e Rs.37,125/- were deposited in Bank Drafts in the Lower Court.*
- 3. Another Cheque by the first party amounting to Rs.17,325/- (Rupees Seventeen Thousand and Three Hundred Twenty Five) bearing cheque No. 020510 dated 07.12.2015 was also dishonored and the cheque amount was deposited by the first party in the Lower Court.*
- 4. The above cases between the first party and second party came up in this Hon'ble High Court and was referred to Lok Adalat of this Hon'ble Court but as informed by the Registry was not functioning and therefore it was referred for Mediation.*
- 5. The first parties are ready to give Rs.5,000/- each for the above three*

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cases over and above the amount submitted through bank drafts for the amount of the four dishonored cheques in cases no. CRR- 115 of 2019 titled as M/s Balaji Enterprises and Another Vs. Sonia Multani, CRR-No. 116 of 2019 titled as M/s Balaji Enterprises and Another Vs. Sonia Multani and CRR No. 120 of 2019 titled as M/s Shiva Enterprise and another Vs. Balvir Multani.

- 6. This would be the full and final settlement regarding the above three cases of dishonored cheques and the amount of Rs.15,000/- (Rs.5,000/- for each three case) will be given in cash to the second party.*
- 7. Sonia Multani – Second party wife of Balvir Multani is receiving, this amount on her behalf and also in the case No. CRR-120 of 2019 titled M/s Shiva Enterprises and another Vs. Balvir Singh Multani, on behalf of Balvir Singh Multani her husband. Power of Attorney in favour of Sonia Multani by Balvir Singh Multani is being attached with the settlement.*
- 8. The process of mediation was explained to the parties and with their consent the mediation proceedings were carried out. Joint as well as separate sessions were held today. The parties with the assistance of the Mediator- Ms. Tulika , voluntarily have arrived at an amicable solution, resolving the above mentioned disputes and differences.*
- 9. The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement/Agreement in the presence of the Mediator.*
- 10. As per knowledge of both the parties, there is no other pending*

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litigation between the parties qua the present dispute.

11. The parties further undertake not to initiate or institute any unwanted litigation against each other and their family arising out of the matter in dispute.

12. 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.

13. 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.

14. 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.

15. 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.

16. The copy of the settlement is being handed over to both the parties.

First Party

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Hitesh Bansal (Adhaar 640774283894) _____

Shyam Sunder Bansal (Adhaar 357004446833), _____

Second Party

Sonia Multani (Adhar No. 718408233678) _____
and also on behalf of Balvir Singh Multani

11.10.2021.
renu

Sd/-
(Tulika Jain)
Mediator”

A perusal of the said settlement/agreement would show that the dispute involved in all the said three revision petitions has been amicably resolved and the due amounts have been paid to the complainant and further an amount of Rs.5,000/- in each case, amounting to a total of Rs.15,000/- has also been paid to the complainant over and above the amount of dishonoured cheques and it has been stated in the said settlement/agreement that the compromise has been effected between the parties without any pressure, undue influence or misrepresentation and both the parties shall abide by the terms and conditions of the agreement and they shall also remain bound by the same. It is further mentioned that the said amount is in full and final settlement with respect to the said three cases.

Learned counsel for the complainant, who is present in Court, has submitted that the terms of compromise are genuine and bona fide and has submitted that he has received the amount as per the compromise and has no objection in case, all three revision petitions are allowed and the impugned judgments of conviction passed and then upheld in appeal, in all the three cases, are set aside in view of the said compromise.

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Learned counsel for the petitioners has submitted that the petitioners are ready to deposit 15% of the amount of the dishonoured cheques i.e. Rs.16,335/- (being 15% of Rs.1,08,900/- which is the total amount of all the four cheques), within a period of two weeks from today with the U.T. Legal Services Authority, in accordance with the judgment passed by the Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H, (2010) 5 SCC 663.**

Learned counsel for U.T., Chandigarh, has submitted that she would have no objection in case the revision petitions are disposed of as the matter stands compromised and in fact, in the present case, State has no role to play.

From the above facts, it is apparent that both the contesting parties are ad idem with respect to the fact that the compromise has been effected between the parties without any pressure, threat or undue influence and the terms of the said compromise have been duly complied with. The compromise would go a long way in maintaining the peace and harmony between the parties and thus, a prayer has been made to the Court for compounding the offence in terms of Section 147 of the Negotiable Instruments Act, 1881 read with Section 320 (6) Cr.P.C. Since the offence relating to dishonour of cheque has a compensatory profile and is required to have precedence over punitive mechanism, therefore, the present revision petitions deserve to be allowed.

This Court in a judgment dated 09.03.2017 passed in CRR no.390 of 2017 titled as ***“Kuldeep Singh vs. Vijay Kumar and another”*** has held as under:-

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*“Reliance can be placed on **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. would result in bringing about ends of justice between the parties in the event of finding that the compromise is genuine, bonafide and free from any undue influence.*

The compromise in question would serve as a everlasting tool in favour of the parties for which indulgence can be given by this Court. The revisional exercise would also be in consonance with the spirit of Section 147 of Negotiable Instruments Act.

*The principle as laid down in **Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097,** would be squarely fortified if the compromise in question is allowed to be effected between the parties with leave of the Court.*

In view of aforesaid, impugned judgment dated 19.01.2017 passed by Additional Sessions Judge, Sri Muktsar Sahib vide which conviction and sentence of the petitioner was upheld stands quashed.

*The revision petition is allowed subject to deposit of 15% of the cheque amount as per ratio laid down in **Damodar S. Prabhu's case (supra)** to State Legal Services Authority, failing which this order will be of no consequence. Necessary consequences to follow.”*

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Reliance in the abovesaid judgment was also placed upon the judgment of Hon'ble Supreme Court in ***Damodar S. Prabhu's*** case(*supra*) and thus as per settled law, this Court has power to set aside the judgment of conviction against the petitioner on the basis of a valid compromise. The compromise in the present case is genuine and valid.

Thus, keeping in view the above-said facts and circumstances, CRR Nos.120, 116 and 115 of 2019 are allowed and judgments of conviction and sentence dated 21.07.2017 and the judgments in appeal passed by the Additional Sessions Judge, Chandigarh dated 08.01.2019, in all the three cases, are set aside and the petitioners in all the three revision petitions are thus, acquitted subject to the petitioners depositing an amount to the tune of Rs.16,335/-, within a period of 02 weeks from the date of receipt of certified copy of this judgment with the U.T. Legal Services Authority.

However, it is made clear that in case the petitioners do not deposit the amount as has been directed, then the present criminal revision petitions would be deemed to have been dismissed.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the above-said judgment.

(VIKAS BAHL)
JUDGE

November 16, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No