

**CRM-6492-2020 in/and
CRR-534-2020 (O & M)**

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

**CRM-6492-2020 in/and
CRR-534-2020 (O & M)
Date of decision: 16.08.2021**

Akram Parvez Khan

...Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Satnam Singh Gill, Advocate,
for the petitioner.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

Mr. Ritesh Kumar Sharma, Advocate,
for respondent No.2.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video
conferencing.

CRM-6492-2020

This is an application under Section 5 of the Limitation
Act for the condonation of delay of 245 days in filing the present
revision.

Learned State counsel and learned counsel for
respondent No.2 submit that they have no objection, if the present
application is allowed.

In view of the above, the present application is allowed
and the delay of 245 days in filing the present revision is
condoned.

CRM-9958-2020

Allowed as prayed for. Annexure P-2 is taken on record,

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subject to all just exceptions.

CRR-534-2020

In the complaint filed under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (for short 'N.I.Act') by complainant-respondent No.2, the petitioner was convicted and sentenced, vide judgment dated 30.11.2016 and order dated 01.12.2016 passed by the learned Judicial Magistrate Ist Class, Gurgaon, as under:

Section	Sentence
138 N.I.Act	SI for one year and to pay an amount of Rs.5 lakh to the complainant as a compensation.

The appeal against the said judgment and order, was dismissed by the learned Additional Sessions Judge, Gurugram, on 19.03.2019. Still aggrieved, the petitioner has filed the present revision petition.

Learned counsel for the petitioner contends that during the pendency of the present petition, a compromise (Annexure P-2) was arrived at between the parties on 12.03.2020, whereby the petitioner had paid the entire compensation amount to respondent No.2. Thereafter, CRM-9974-2020 has been filed for compounding the offence in view of the settlement arrived at between the parties.

Learned counsel for respondent No.2 does not dispute the factum of the compromise effected between the parties.

Learned counsel for the petitioner as well as the learned counsel for respondent No.2-complainant, are ad-idem and submit that as the matter stands compromised, necessary

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permission may be granted to the parties to compound the offence under Section 138 N.I.Act; the impugned judgments and order passed by the trial Court and the appellate Court may be set aside and the petitioner may be acquitted of the charge(s) framed against him.

At this stage, learned counsel for the petitioner submits that the petitioner, in order to pay the settlement amount to the complainant, has exhausted his entire resources. Having lost his job, the petitioner is leading a life of misery, with the debt burden mounting continuously and is now living hand to mouth. The learned counsel prays that a lenient view be taken against the petitioner while imposing the costs in terms of the law laid down by the Hon'ble Supreme Court in Damodar S.Prabhu Vs. Sayed Babalal H . 2010 (2) RCR (Criminal) 851.

Learned counsel for respondent No.2 does not mind reducing the costs to be imposed in terms of the judgment of the Hon'ble Apex Court in Damodar S. Prabhu's case (supra).

The Hon'ble Supreme Court in Madhya Pradesh State Legal Services Authority Vs. Prateek Jain & Anr., (2014)10 SCC 690, held that it would be for the parties, particularly the accused person, to make out a plausible case for the waiver/reduction of the costs and to convince the concerned Court about the same. It was held as under:-

“....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

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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.”

The Hon'ble Apex Court in the decision dated 06.08.2019 passed in Rajendra Vs. Nand Lal, 2020(1) RCR (Crl.) 166, wherein the Hon'ble Apex Court, has held as under:-

“5. Learned counsel appearing for the appellant submitted that in view of the compromise arrived at between the parties, the conviction of the appellant under Section 138 of N.I. Act is to be set aside and the appellant is entitled to an acquittal. The learned counsel for the appellant has drawn our attention to the case of Damodar S. Prabhu vs. Sayed Babalal H., (2010) 5 SCC 663 and submitted that in cases arising under Section 138, N.I. Act where the parties are compromising the matter this Court has issued the guidelines as to the levy of costs depending upon stage of the compromise arrived at between the parties. The learned counsel for the appellant has submitted that in the special facts and circumstances of the case, the Court can waive the costs to be levied. As discussed earlier, in the present case, the appellant, accused was acquitted by the Trial Court inter alia on the ground that the respondent had not established that there was a legally enforceable debt. Since the appellant was convicted only in the High Court, the appellant had substantial ground to raise in the criminal appeal filed before this Court. Because of the reversal of the acquittal by the High Court and the conviction recorded only by the High Court, the appellant had opportunity of negotiating for settlement in this Court after filing the appeal. In such facts and circumstances of the case, this is not a case where cost is to be imposed, as per the guidelines laid down by this Court as per the judgment reported in (2010) 5 SCC 663 (supra).”

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In the present case, the cheque amount is Rs.4,19,599/-. In view of the law laid down in Damodar S. Prabhu's case (supra), compounding of the present offence may be allowed on the condition that the petitioner-accused pays 15% of the cheque amount by way of costs. On calculation, 15% of the cheque amount comes to Rs.62,940/-. In the present case, the complainant has received the entire compensation amount, and he does not dispute the reduction of costs to be imposed in terms of the judgment of the Hon'ble Apex Court in Damodar S. Prabhu's case (supra).

As noticed above, the parties have settled the dispute(s) by way of the compromise dated 12.03.2020 (Annexure P-2). The said fact, coupled with the law laid down by the Hon'ble Apex Court in Prateek Jain's case (supra) and keeping in view the specific/special reasons, this Court reduces the costs from Rs.62,940/- to Rs.50,000/- in view of the law laid down by the Hon'ble Apex Court in Damodar S. Prabhu's case (supra) and grants permission to the parties to compound the offence punishable under Section 138 N.I.Act and accordingly, CRM-9974-2020 stands allowed.

The impugned judgment of conviction dated 30.11.2016 and order of sentence dated 01.12.2016 passed by the learned Judicial Magistrate Ist Class, Gurgaon, and the judgment dated 19.03.2019 passed by the learned Additional Sessions Judge, Gurugram, are set aside; the complaint under Section 138 N.I Act filed by the respondent stands dismissed; the petitioner stands acquitted of the notice of accusation served upon him, subject to

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him deposing the costs of Rs.50,000/- with the Punjab State Legal Services Authority, in view of the law laid down by the Hon'ble Supreme Court in Damodar S.Prabhu' case (supra).

Allowed in the aforementioned terms.

16.08.2021
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note: Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No