

CRM-42451-2021 and
CRM-42791-2021 in/and
CRR-307-2021 (O&M)

-1-

108

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

CRM-42451-2021 and
CRM-42791-2021 in/and
CRR-307-2021 (O&M)
Date of decision : 16.12.2021

Avtar Singh @ Kala Wlder

...Petitioner

Versus

M/s Mittal Electrical Industries

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amarjit Singh Ahluwalia, Advocate for the petitioner.

Mr. Vishal Dhiman, Advocate and
Mr. Vipul Goel, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)

CRM-42451-2021

Application is allowed, as prayed for.

Additional affidavit on behalf of the respondent is taken on
record, subject to all just exceptions.

With the consent of learned counsel for the parties, the main
criminal revision is taken on board for final disposal as the compromise is
stated to have been effected between the parties.

CRM-8273-2021

For the reasons stated in the application, which is duly

supported by an affidavit, delay of 588 days in filing the present criminal revision is condoned.

Application is allowed.

CRR-307-2021

This is a Criminal Revision in which challenge has been made to the judgment dated 08.03.2017 vide which the Judicial Magistrate Ist Class, Bathinda, had convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and had sentenced the petitioner to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo simple imprisonment for 7 days, with respect to dishonour of cheque dated 14.05.2014 amounting to Rs.20,000/-.

Challenge has also been made to the judgment dated 03.05.2019 passed by the Additional Sessions Judge, Bathinda, vide which the appeal preferred by the petitioner against the abovesaid judgment, was dismissed.

The brief facts of the case are that the respondent through sole proprietor namely Sita Ram Mittal had filed a complaint under Section 138 of the Act of 1881 against the present petitioner on account of dishonour of the cheque dated 14.05.2014 amounting to Rs.20,000/- and it is in the said proceedings, the petitioner was convicted under Section 138 of the Act of 1881 and was sentenced as has been mentioned hereinabove.

During the pendency of the appeal, there was compromise which had been arrived at between the parties before the Mediation and

Conciliation Centre and it had been agreed that the petitioner would pay an amount of Rs.30,000/- to the complainant/respondent in five installments. A perusal of the judgment of the Appellate Court would show that the petitioner had paid an amount of Rs.25,000/- to the complainant but however could not pay the balance amount of Rs.5000/- and thus, the appeal was dismissed.

Learned counsel for the petitioner as well as complainant have submitted that during the pendency of the present criminal revision, the balance amount has also been paid and with respect to the same, the complainant has submitted his additional affidavit which has been placed on record by way of filing application bearing CRM-42451-2021. Relevant portion of the said affidavit is reproduced hereinbelow:-

“Additional affidavit of Sita Ram Mittal, aged 77 years, s/o Sh. Prahlad Chand, Proprietor M/s Mittal Electrical Industries, E-70, IGC, Mansa Road, Bathinda to present revision petition on behalf of respondent.

I, the above named deponent, do hereby solemnly affirm and state as under:-

1. That present revision petition has been filed for setting aside the judgment and order dated 08.03.2017 passed by Ld. JMIC Bathinda and judgment dated 03.05.2019 passed by Ld. Addl. Sessions Judge Bathinda whereby the sentence imposed upon the petitioner to undergo R.I. for a period of 6 months and to pay fine of Rs.1000/- has been confirmed on the complaint filed by deponent U/s 138 N.I. Act.

2. That during the pendency of proceedings, the deponent/respondent/complainant entered into compromise

and has also filed his short reply by way of an affidavit admitting compromise arrived between petitioner with deponent.

3. *That since compromise has been effected between parties, therefore deponent/complainant/respondent has no objection if the sentence imposed upon the petitioner is suspended and he may also be acquitted after setting aside the aforesaid judgments/orders.*

4. *That contents of short reply dated 25.04.2021 may also be read as part and parcel of this additional affidavit.*

Place: Bathinda

Sd/- (Sita Ram Mittal)

Date: 1/12/2021

Deponent/Respondent

VERIFICATION

Verified that contents of para No.1 to 4 of short reply by way of an affidavit on behalf of respondent are true and correct to my knowledge. No part of it is false and nothing has been kept concealed therefrom.

Place: Bathinda

Sd/- (Sita Ram Mittal)

Date: 1/12/2021

Deponent/Respondent"

A perusal of the said affidavit would show that the complainant has specifically submitted that the matter has been compromised between the parties and he has no objection in case the sentence imposed upon the petitioner is suspended or the petitioner is acquitted of the said offence.

Learned counsel for the petitioner as well as respondent have reiterated the fact that the said compromise is genuine and bona fide and has been entered into without any undue pressure, or coercion and the same would help in bringing peace and harmony between the parties.

Learned counsel for the petitioner has submitted that the petitioner is ready to deposit 15% of the amount of the cheque i.e. Rs.3000/-

within a period of four weeks with the District Legal Services Authority, Bathinda in accordance with the judgment passed by the Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H, (2010) 5 SCC 663.**

This Court has heard the learned counsel for the parties.

From the above facts, it is apparent that both the contesting parties are ad idem 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 petition deserves to be allowed.

It is also relevant to state that the petitioner has already undergone custody of 1 month and 4 days out of total sentence of 6 months of rigorous imprisonment.

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:-

“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.”*

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 abovesaid facts and circumstances, judgment and order on quantum of sentence dated 08.03.2017 passed by the Judicial Magistrate Ist Class, Bathinda as well as the judgment dated

03.05.2019 passed by the Additional Sessions Judge, Bathinda are set aside and the present criminal revision is allowed in terms of the compromise subject to the petitioner depositing an amount of Rs.3000/- within a period of four weeks from the date of receipt of certified copy of this judgment with the District Legal Services Authority, Bathinda.

However, it is made clear that in case the petitioner does not deposit an amount of Rs.3000/- within a period of four weeks from the date of receipt of certified copy of this judgment with the District Legal Services Authority, Bathinda, the present criminal revision would be deemed to have been dismissed.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

16.12.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No