

CRM-27777-2021 in/and
CRR-3126-2015

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

**CRM-27777-2021 in/and
CRR-3126-2015 (O & M)
Date of decision: 03.09.2021**

Vikramjit Singh

...Petitioner

Versus

Gurminder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Gurinderjit Singh, Advocate,
for the petitioner.

Ms. Jasleen Kaur, Advocate,
for the respondent.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video
conferencing.

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This is an application under Section 482 Cr.P.C. for
placing on record an affidavit dated 25.05.2018, sworn by the
respondent, as Annexure R-1.

Allowed as prayed for. The affidavit dated 25.05.2018
(Annexure R-1) is taken on record, subject to all just exceptions.

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In the complaint filed under Section 138 of the
Negotiable Instruments Act, 1881 (for short 'N.I.Act') by the
complainant-respondent, the petitioner was convicted and
sentenced, vide judgment and order dated 22.05.2014 passed by
the learned Additional Chief Judicial Magistrate, Moga, as under:

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Section	Sentence
138 N.I.Act	Rigorous imprisonment for two years and to pay a fine of Rs.10,000/-, and in default thereof, to further undergo rigorous imprisonment for a period of two months.

The appeal against the said judgment and order, was dismissed by the learned Additional Sessions Judge, Moga, on 11.08.2015. 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 has been arrived at between the parties and the respondent has sworn an affidavit dated 25.05.2018, deposing therein that he has no objection, if the present petitioner is acquitted of the notice of accusation served upon him.

Learned counsel for the respondent does not dispute the factum of the compromise effected between the parties.

Learned counsel for the petitioner and the learned counsel for the respondent-complainant, are *ad-idem* and submit that as the matter stands compromised, necessary 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 notice of accusation served upon 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 faced the financial crisis, the petitioner is leading a life of misery, with the

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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 the respondent 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 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.”

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The Hon'ble Apex Court in the decision dated 06.08.2019 passed in Rajendra Vs. Nand Lal, 2020(1) RCR (Cr1.) 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).”

In the present case, the cheque amount is Rs.4,40,000/-. 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.66,000/-. In the present case, the complainant has received the entire cheque 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).

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As noticed above, the parties have settled the dispute by way of affidavit dated 25.05.2018 (Annexure R-1). 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.66,000/- to Rs.25,000/- 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.

The impugned judgment of conviction and order of sentence dated 22.05.2014 passed by the learned Additional Chief Judicial Magistrate, Moga, and the judgment dated 11.08.2015 passed by the learned Additional Sessions Judge, Moga, 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 him depositing the costs of Rs.25,000/- 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.

03.09.2021
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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