IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105+214

CRR-4330-2017 (O&M)
Decided on : 09.11.2021

Meena Sharma

. . . Petitioner

Versus

State of Punjab and another

. . . Respondents

AND

CRR-4708-2017 (O&M)

Meena Sharma

. . . Petitioner

Versus

State of Punjab and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. G. S. Brar, Advocate
for the petitioner.

Mr. A. K. Kaundal, DAG, Punjab.

Mr. Arshdeep Singh Arora, Advocate
for respondent No. 2.

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VIKAS BAHL, J. (Oral)

Present order would dispose of two criminal revisions i.e. CRR-4330-2017 titled as Meena Sharma Vs. State of Punjab & another and CRR-4708-2017 also titled as Meena Sharma Vs. State of Punjab & another.

In CRR-4330-2017, challenge has been made to the judgment dated 16.01.2014 in the complaint under Section 138 of the

Negotiable Instruments Act, 1881 instituted by respondent No. 2-Punjab Financial Corporation. The present petitioner has been convicted under Section 138 of the Negotiable Instruments Act and has been sentenced to undergo rigorous imprisonment of one year and fine of Rs.5,000/- and in default of payment of fine, further rigorous imprisonment of one month by the Judicial Magistrate, 1st Class, Jalandhar.

Challenge is also to the judgment dated 13.11.2017 passed by the Additional & Sessions Judge, Jalandhar vide which the appeal filed by the present petitioner against the judgment of the Judicial Magistrate 1st Class, Jalandhar has also been dismissed and the sentence has been upheld.

In the present case, the complaint no. 2642 of 2009 was filed by the respondent No. 2- Punjab Financial Corporation under Section 138 of the Negotiable Instruments Act, 1881 after the cheque dated 30.11.2007 for an amount of Rs.5 lacs had been dishonored with the remarks “Funds Insufficient”. As stated above, the petitioner was convicted and the appeal filed by the petitioner was also dismissed. Thus, the present revision petition challenging the said order has been filed.

In CRR-4708-2017, challenge has been made to the judgment dated 20.01.2014 in the complaint under Section 138 of the Negotiable Instruments Act, 1881 instituted by respondent No. 2-Punjab Financial Corporation. The petitioner (in CRR-4708-2017) has been convicted under Section 138 of the Negotiable Instruments Act and has been sentenced to undergo rigorous imprisonment of one year by the Judicial Magistrate, 1st Class, Jalandhar.

Challenge is also to the judgment dated 13.11.2017 passed by the Additional & Sessions Judge, Jalandhar vide which the appeal filed by the present petitioner against the judgment of the Judicial Magistrate 1st Class, Jalandhar has also been dismissed and the sentence has been upheld.

In the present case, the complaint no. 77/2 of 2013 was filed by the respondent No. 2- Punjab Financial Corporation under Section 138 of the Negotiable Instruments Act, 1881 after the cheque dated 30.01.2008 for an amount of Rs.50,000/- had been dishonored with the remarks "Insufficient Funds". As stated above, the petitioner was convicted and the appeal filed by the petitioner was also dismissed. Thus, the present revision petition challenging the said order has been filed.

It is observed that in both the above said cases, the applicant-petitioner has filed application under Section 147 of the Negotiable Instruments Act, 1881 read with Section 482 Cr.P.C. for compounding the offence under Section 138 of Negotiable Instruments act and for waiving off the compounding fee in the present case on the basis of one time settlement arrived at, between the parties.

In CRR-4330-2017, an application bearing CRM-37502-2021 has been filed and in CRR-4708-2017, an application bearing

CRM-37528-2021 has been filed. In the said applications, detailed background has been given and it has been averred that one time settlement has been arrived at between the petitioner and respondent No. 2- Punjab Financial Corporation for an amount of Rs.22,80,000 and the said amount has been paid vide two drafts i.e. draft bearing number URJ-789505 dated 30.12.2020 amounting to Rs. 11,40,000 and URJ-789504 dated 30.12.2020 amounting to Rs.11,40,000/- drawn on Punjab National Bank, Kapurthala Road, Jalandhar and the copies of the said drafts have also been annexed as Annexure P-8 and P-9 along with the above said applications. It has also been averred that respondent No. 2- Punjab Financial Corporation had issued a No Due Certificate dated 11.01.2021 vide which it has been stated that the loan account of M/s Sri Ram and Company, E-9, Industrial Focal Point, Bye Pass, Jalandhar stands adjusted in full and nothing is due towards them. The said No Due Certificate dated 11.01.2021 (Annexure P-10) is reproduced hereinbelow:-

"***TO WHOMSOEVER IT MAY CONCERN***

This is to certify that the loan account of M/s Sri Ram & Company, E-9, Industrial Focal Point, Bye Pass, Jalandhar, stands adjusted in full and nothing is due towards the concern as on date.

Sd/-

District Manager,
Punjab Financial Corporation
District Office
Above Bank of India
Ghara Road, Jalandhar"

It has been pointed out that the cheques in question, in both the cases, had been given for the part payment of loans which have been taken from Punjab Financial Corporation by the husband of the petitioner and the said entire dispute has been settled. Further reference has been made to the judgment of the trial Court where accused No. 1 has been stated to be M/s Sri Ram and Company through its proprietor and the present petitioner is accused No. 2.

Learned counsel appearing for the complainant-respondent No. 2 has also submitted that the entire amount due from the petitioner as well as from M/s Sri Ram and Company has been received by the Punjab Financial Corporation and nothing is due towards the petitioner or towards the said firm. The learned counsel has stated that the documents Annexure P-8 to P-10, moreso the documents vide which the "No Due Certificate" has been issued by the Punjab Financial Corporation is genuine and the matter has been amicably settled. It is further submitted that the amount of the cheque was for the part payment of the loan which had been taken by the husband of the petitioner and with respect to the said loan, one time settlement has been arrived at, which has been duly executed and the petitioner has paid the entire money in pursuance of the same. It is submitted that the amount of cheque is part and parcel of the total amount of Rs.22,80,000/- which has already been repaid. It is further submitted that respondent No. 2 also prays that the present revision petition be allowed and the impugned judgements be set aside and the complaint under Section 138 of the Negotiable Instruments Act be quashed and the application for compounding the offence be allowed in view of the compromise.

Learned counsel for the applicant-petitioner has also submitted that in the present case, the petitioner would not be in a position to pay 15% of the cheque amount as the petitioner is a 65 year old widow and has no source of livelihood and with great difficulty, after selling the machinery and other articles, has been able to make the repayments with respect to 22,80,000/-. Reliance in this regard has been made to the paragraph 17 of the judgement passed by the honorable supreme Court in ***Damodar S. Prabhu Vs. Sayed Babalal H.*** reported as ***2010 5 SCC 663*** as well as judgment of the Hon'ble Supreme Court in ***Rajendra Vs. Nand Lal*** reported as ***2020 (1) RCR (Criminal) 166*** and also the judgment of a Coordinate Bench of this Court in ***Tilak Kataria Vs. State of Haryana and another*** reported as ***2021 (3) RCR (Criminal) 404*** **.**

Learned counsel for the complainant-respondent No. 2 has also stated that they have no objection in case the said amount of 15% is waived off in view of the special circumstances in the present case.

Learned State counsel has stated that since the present case is under Section 138 of the Negotiable Instruments Act and the matter has been compromised, they would have no objection in case the revision petition is allowed, in accordance with law.

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.

The Hon'ble Supreme Court of India in case of Rajendra (*Supra)* and after taking into consideration the law laid down in *Damodar S. Prabhu (supra)* and in view of the facts and circumstances of the said case, did not impose cost. The relevant portion of the said judgement is reproduced hereinbelow:

> "*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).

The abovesaid case was a case of judgment of reversal and on account of the said fact, the Hon'ble Apex Court waived the costs.

Similarly, a Coordinate Bench of this Court in Tilak Kataria (*supra)* has also held as under*:*

> *"At this stage, learned counsel for the petitioner states that the petitioner, in order to pay the settlement amount to the complainant, has exhausted his entire resources, including the sale of his house/flat and, thus, he is not in a position to deposit the costs in terms of the judgment of the Hon'ble Supreme Court in Damodar S. Prabhu Vs. Sayed Babalal H., (2010)5 SCC 663. He, thus, contends that in view of the peculiar facts of the present case, wherein the complainant has accepted the settled amount, the imposition of costs in terms of the judgment in Damodar S. Prabhu's case (supra) may be waived off.*
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> *xxx—xxx--xxx*

> *After hearing the learned counsel for the parties and taking into consideration the fact that the parties have settled their dispute(s) by way of the compromise dated 23.01.2019, 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 deviates from the conditions 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. Accordingly, the impugned judgments and orders passed by the Courts below are set aside. The complaints under Section 138 N.I. Act are dismissed and the petitioner is acquitted of the notice(s) of accusation served upon him.*
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> *Disposed of in the aforementioned terms".*

In the abovesaid case,the petitioner therein had stated to have exhaused her entire resources and thus, was not in a position to deposit the cost. In the present case, the petitioner is a widow of 65 years of age and has no source of livelihood and with great difficulty, after selling the machinery and other articles, has been able to arrange an amount of Rs. 22,80,000/- so as to pay to respondent No. 2-Punjab Financial Corporation and thus, in view of the said averments as well as keeping in view the special facts and circumstances of the present case, this court deems it appropriate that cost should not be imposed upon the present petitioner.

It is settled law that this Court has the power to set aside the judgement 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, both the criminal revisions i.e. CRR-4330-2017 as well as CRR-4708-2017 are allowed and the judgment of conviction and sentence dated 16.01.2014 as well as the judgment dated 30.11.2017, which are subject matter of CRR-4330-2017, are set aside and also the judgment of conviction and sentence dated 20.01.2014 as well as judgment dated 30.11.2017, which are subject matter of CRR-4708-2017, are also set aside.

Pending miscellaneous application(s), if any, shall also stand disposed of, in view of the abovesaid order.

A photocopy of this order be placed on the file of the connected case.

(VIKAS BAHL)
JUDGE

9th November, 2021
Mehak

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No