

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

CRR-2936-2018 (O & M)
Date of Decision: 28.04.2021

Tilak KatariaPetitioner
Versus

State of Haryana and anotherRespondents

CORAM: HON’BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. K.S. Chaudhary, Advocate, for the petitioner.
Mr. Pardeep Prakash Chahar, DAG, Haryana.
Mr. Arastu Chopra, Advocate, for respondent No.2.

HARNARESH SINGH GILL, J.

Case is taken up for hearing through video conferencing.

With no objection from the counsel for the respondents, CRM-9720-2021 and CRM-12377-2021 are allowed and the date of hearing in the main petition is pre-poned from 16.08.2021 to that of today.

In the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short ‘the Act’) by complainant-respondent No.2, the petitioner was convicted and sentenced vide judgment dated 28.04.2016 and order dated 29.04.2016, respectively, passed by the learned Judicial Magistrate Ist Class, Panchkula, as under:

under Section	Sentence
138 N.I.Act	SI for one year and to pay the entire amount as fine to be recovered as compensation.

The appeal against the said judgment and order, was dismissed by the learned Additional Sessions Judge, Panchkula on 30.07.2018.

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 was arrived at between the parties on 23.01.2019, whereby the entire amount was agreed to be paid by the petitioner to the complainant.

A Coordinate Bench of this Court, on 09.07.2019, passed the following order:

“Learned counsel for the petitioner submitted that in fact the petitioner had issued five cheques for a total amount of `16,36,000/- which were dishonoured. It has been submitted that the matter in fact stands compromised amongst the parties and it has been agreed that the petitioner would repay the amount by way of four installments as has been recorded in compromise deed dated 23.01.2019.

Learned counsel for the petitioner has categorically stated that the aforesaid compromise is in respect of all five cases and not just the four cases which are also listed before this Court today.

Notice of motion.

Dasti as well.

This case shall also be taken up alongwith other connected four cases on 25.09.2019.

Respondent No.2-complainant shall inform this Court on the next date of hearing as to whether the compromise is in respect of all five cases or in respect of four cases only.”

Thereafter, CRM-9721-2021 has been filed for compounding the offence in view of the settlement arrived 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 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 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.

Learned counsel for respondent No.2-complainant does not have any objection to the aforesaid prayer made by the counsel for the petitioner.

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.”

Learned counsel for the petitioner apart from heavily relying upon the said judgment, relies upon the order 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).”

In view of the above, in the present case, when the complainant does not have any objection to accept the settled

amount and further he is ready to forego the costs to be imposed in terms of the judgment of the Hon'ble Apex Court in Damodar S. Prabhu's case (supra).

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. The impugned judgment dated 30.07.2018 passed by the learned Additional Sessions Judge, Panchkula, and the judgment of conviction dated 28.04.2016 and the order of sentence dated 29.04.2016, passed by the learned Judicial Magistrate Ist Class, Panchkula, are set aside. The complaint under Section 138 N.I.Act. is dismissed and the petitioner is acquitted of the notice(s) of accusation served upon him. The petitioner, who is stated to be in custody, be released forthwith in this case, if not required in any other case.

Disposed of in the aforementioned terms.

28.04.2021

parveen kumar

(Hanaresh Singh Gill)
Judge

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