

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

Date of Decision: 28.04.2021

(1) CRR-2996-2018 (O&M)

Tilak Kataria

.....Petitioner

Versus

State of Haryana and another

....Respondents

(2) CRR-3006-2018 (O&M)

Tilak Kataria

.....Petitioner

Versus

State of Haryana and another

....Respondents

(3) CRR-3018-2018 (O&M)

Tilak Kataria

.....Petitioner

Versus

State of Haryana and another

....Respondents

(4) CRR-3020-2018 (O&M)

Tilak Kataria

.....Petitioner

Versus

State of Haryana and another

....Respondents

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.

All the cases are taken up for hearing through video conferencing.

With no objection from the counsel for the respondents, CRM-9737-2021; CRM-9735-2021; CRM-9641-2021 and CRM-9998-2021 are allowed and the date of hearing in the main petitions is preponed from 16.08.2021 to that of today.

This order shall dispose of the above noted four petitions, as common questions of law and facts are involved therein. However, for the facility of reference, the main order is being passed in CRR-2996-2018.

In the complaints 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 and order dated 28/29.04.2016 and 18/19.07.2016 passed by the learned Judicial Magistrate, Ist Class, Panchkula, as under:-

Complaint Case No.	Under Section	Sentence
333/2014	138	SI for one year and to pay the entire amount as fine to be recovered as compensation.
294/2014	138	SI for one year and to pay the entire amount as fine to be recovered as compensation.
38/2013	138	RI for 2 years and to pay a fine of Rs.4000/-
431/2014	138	RI for 2 years and to pay a fine of Rs.4000/-

The appeals against the said judgments and orders, were dismissed by the learned Additional Sessions Judge, Panchkula on 30.07.2018.

Still aggrieved, the petitioner has filed the present revision petitions.

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, inter-alia, noticed the factum of compromise and the factum of payment made and to be made to the complainant. The relevant extracts from the said order, would read as under:-

“On the last date of hearing, learned counsel for the petitioner had submitted that the matter has been compromised amongst the parties in respect of four cheques out of which the present revision petitions have arisen.

Pursuant to the aforesaid submission, the parties were directed to appear before the trial Court and to get their statements recorded qua factum of compromise. Since the petitioner was confined in jail, therefore, the Superintendent, Model Jail, Chandigarh was directed to make arrangements for producing the petitioner before JMIC, Panchkula so as to get his statement recorded.

Pursuant to the aforesaid direction, the petitioner was produced before the trial Court wherein his statement as well as statement of the complainant was recorded, wherein the parties

have admitted the factum of compromise. It has been agreed amongst the parties, as per compromise deed (Ex.C-1), the petitioner has agreed to pay an amount of `16,36,000/- in four installments as follows:-

Cheque No	Date	Amount (In Rupees)	Drawn at
654243	30.04.2019	4,00,000	SBI
654244	30.07.2019	4,00,000	SBI
654245	30.11.2019	4,00,000	SBI
654246	10.03.2020	4,36,000	SBI

Learned counsel for the petitioner has submitted that pursuant to the aforesaid statement, the first installment of Rs.4 lakhs has already been paid.

Since the substantial agreed amount is yet to be paid, therefore, the matter is adjourned to 25.09.2019, so as to enable the petitioner to make payment of the remaining installments as per schedule.....”

CRM-9738-2021; CRM-9736-2021; CRM-9642-2021 and CRM-9999-2021, have been filed in the present set of petitions, for compounding the offences in view of the settlement arrived 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 compromise, necessary permission may be granted to the parties to compound the offence under Section 138 N.I.Act; the impugned judgments and

orders 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. 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.

Disposed of in the aforementioned terms.

28.04.2021
ds

(Hanaresh Singh Gill)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No