

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

222 (1)

CRM-M-35638-2021

Decided on : 23.09.2021

Davinder Kumar

... Petitioner

Versus

Kulbhushan Kumar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

(Through Video Conferencing)

PRESENT: Mr. Deepak Arora, Advocate
for the petitioner.

Mr. G. S. Rawat, Advocate
for respondent No. 1.

Mr. Karanbir Singh, AAG, Punjab.

VIKAS BAHL, J. (Oral)

This is a petition under Section 482 Cr.P.C. for quashing of the proceedings initiated with reference to complaint No. 18 dated 28.04.2001 under Section 138 of the Negotiable Instruments Act titled as 'Kulbhushan Kumar Vs. Davinder Kumar' and all subsequent proceedings arising therefrom. Challenge has also been made to the judgment and order of sentence dated 14.05.2008 passed by the Sub Judicial Magistrate 1st Class, Garhshankar as well as the judgment dated 07.08.2012 and the order dated 01.06.2015 passed by Sessions Judge, Hoshiarpur, on the basis of compromise.

Brief facts of the present case are that the respondent No. 1 Kulbhushan Kumar had filed a complaint under Section 138 of the Negotiable Instruments Act on the allegation that the petitioner had

issued a cheque no. 330679 dated 20.11.2000 for a sum of Rs.61,000/- in favour of the complainant-respondent No. 1 in order to discharge his liability and the cheque was presented to the Bank. The same was returned with the remarks 'Insufficient Funds'. After issuance of the legal notice, when the amount was not paid, the complaint was filed. The learned Sub Divisional Judicial Magistrate, Garhshankar vide its judgment dated 14.05.2008 convicted the present petitioner under Section 138 of the Negotiable Instruments Act and sentenced the petitioner for two years of rigorous imprisonment along with fine of Rs.5,000/-. The petitioner filed an appeal before the Sessions Judge, Hoshiarpur which was disposed of on 07.08.2012 as having been compromised. A perusal of the same would show that the matter had been compromised between the petitioner and respondent No. 1 for full and final settlement of Rs.70,000/- out of which Rs.36,000/- had been paid by the petitioner to the respondent No. 1 in Court on that day itself. It was further stated that the petitioner was ready to pay 15% of the cheque amount and in lieu of that statement, he deposited the amount of Rs.9,150/- i.e. 15% of the total cheque amount of Rs.61,000/- with the District Free Legal Society Fund. A perusal of para 2 of the said judgment would show that a receipt in that respect had been produced and was taken on record on that day. The balance amount of Rs.34,000/- had to be paid in equated installments. Since the entire balance amount could not be paid, the complainant-respondent No. 1 moved an application for revival of the proceedings in the appeal which had been

disposed of. During the said proceedings, although the petitioner had paid another amount of Rs.9,500/- but could not pay the complete balance amount and thus, the Criminal Appeal No. 9 dated 05.06.2008 was deemed to have been dismissed and the petitioner was directed to undergo sentence of imprisonment imposed upon him by the trial Court. The petitioner was arrested and he has been in custody and even is out on parole till its expiry. Thus, the petitioner has been in custody since 08.09.2021.

After passing of the said order, dated 01.06.2015, compromise has been effected between the parties which has been annexed as Annexure P-4 with the present petition. The terms of the said compromise are reproduced hereinbelow:

“This deed of compromise is being entered into on this 17th day of August, 2021 at Hoshiarpur in between the following parties:-

Davinder Kumar s/o Sh. Sadhu Ram, resident of Village Rampur Sahni, P.O. Bas, Tehsil Anandpur Sahib, District Rupnagar at present resident of 96-C, Near Laxmi Narayan Mandir, Jawahar Market, Nangal Township, District Rupnagar (hereinafter called “first party”) (Aadhaar No.3405 7890 9193)

AND

Kulbhushan Kumar S/o Sh. Chanan Ram, resident of Village Mehandwani, Tehsil Garhshankar, District Hoshiarpur (hereinafter called “second party”) (Aadhaar No.9343 0292 9977)

WHEREAS on account of dishonour of cheque no.330679 dated 20.11.2000 in the sum of Rs.61,000/- in favour of the second party by the first party, the second party had filed complaint under Section 138 of Negotiable Instruments Act titled 'Kulbhushan Kumar Vs. Davinder Kumar' Act Complaint No.18 of 28.04.2001 and vide judgment dated 14.05.2008, the first party was held guilty and was

sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs. 5,000/- or in default of payment of fine to further undergo rigorous imprisonment for one month.

WHEREAS, *against the aforesaid judgment, the first party preferred a criminal appeal titled 'Davinder Kumar Vs. Kulbhushan Kumar' Criminal Appeal No.09 of 05.06.2008 wherein compromise was arrived between the parties and the first party agreed to pay a sum of Rs.70,000/- as full and final settlement and out of the same Rs.36,000/- was paid by him and on the basis of said compromise, vide order dated 07.08.2012 passed by Sh. G.K. Dhir, the then Learned Sessions Judge, Hoshiarpur, the appeal was disposed off with direction to first party to make the payment of balance amount of Rs.34,000/- in equal installment of Rs.5,000/- per month and the first party was further directed to deposit 15% of the cheque amount of Rs.61,000/- with District Free Legal Aid Fund and as such a sum of Rs.9150/- was deposited by the first party. It was further ordered that in case the entire amount is not paid as per the compromise, the appeal will be deemed as dismissed and the first party will have to undergo sentence as awarded by the Learned Trial Court.*

WHEREAS *due to some unavoidable circumstances and due to financial constraints, the first party was unable to pay the balance amount and as such the second party preferred an application for revival of the above said appeal vide Criminal Misc. No.15 of 06.03.2013 wherein vide orders dated 01.06.2015 passed by Sh. Sunil Kumar Arora, the then Learned Sessions Judge, Hoshiarpur, the appeal was ordered deemed to be dismissed and warrants of conviction of the first party were ordered to be issued.*

WHEREAS, *on the basis of issuance of re-arrest warrants of the first party, he was arrested and was confined to Central Jail, Hoshiarpur to undergo the sentence as awarded against him and at present he is out on parole.*

WHEREAS, *now, with the intervention of respectable of both the villages, both the parties have compromised with each other on the following terms and conditions:-*

- 1. That now the second party has received entire balance amount from the first party and now nothing is due against the first party towards the*

second party.

2. *That the second party has No Objection in case the first party prefers a petition before Hon'ble Punjab and Haryana High Court for setting aside of judgment of conviction dated 14.05.2018 and if need arises the second party will suffer such like statement before Court so that the judgment is set aside or quashed and the second party will also file affidavit in this respect, if necessary.*

3. *That all litigations between the parties qua the above cheque will be deemed to be settled in view of the present compromise.*

4. *That both the parties will abide by all the terms and conditions of this compromise deed and will live in peace and harmony with each other in future.*

Hence, this compromise has been reduced into writing on which both the parties to the compromise have signed voluntarily, without any undue pressure from any quarter in the presence of the following witnesses.

First party

Second Party

***Sd/-
(Davinder Kumar)***

***Sd/-
(Kulbhushan Kumar)”***

A perusal of the abovementioned compromise would show that the complainant party has received the entire balance amount and that they have no objection in case the judgment of conviction is set aside. It has been stated that the said compromise is being entered into with their own free will and without any coercion or undue pressure.

Learned counsel for the petitioner has submitted that the compromise is genuine and bonafide and has referred to the judgment of a Co-ordinate Bench of this Court in CRM-M-17272-2015 dated 28.01.2016 titled as *Ram Parkash and others Vs. State of Punjab and*

others to contend that under similar circumstances, the petition under Section 482 Cr.P.C. was entertained and the FIR with all subsequent proceedings was quashed and even the judgment of conviction was set aside on the basis of compromise.

Learned counsel for the complainant has submitted the affidavit of respondent No. 1- complainant, which is taken on record as Mark-A. A perusal of the affidavit would show that it has been reiterated by the complainant that the matter has been settled and the amount due has been received by respondent No. 1 in full and final settlement of his dues and that he has no objection in case the present petition is allowed.

Learned State counsel has submitted that since, this is a dispute under section 138 Cr.P.C., thus, he has no objection in case the petition is allowed and judgment and order of sentence dated 14.05.2008 passed by the Sub Judicial Magistrate 1st Class, Garhshankar as well as the judgment dated 07.08.2012 and order dated 01.06.2015 passed by Sessions Judge, Hoshiarpur are set aside.

This Court has heard the learned counsel for the parties. The aforesaid facts would show that although, the petitioner had not fully complied with the terms of the earlier compromise but has entered into a fresh compromise and the matter has also been finally amicably settled; and further, the said compromise will bring peace and harmony between the petitioner and the complainant party.

The Coordinate Bench of this Court in Ram Parkash's case

(*supra*), has allowed the petition under Section 482 Cr.P.C. under similar circumstances. The relevant portion of the said judgment is reproduced hereinbelow:

“Prayer in this petition filed under Section 482 Cr.PC is for quashing of the FIR No.225, dated 24.08.2005 (Annexure P-1) under Sections 323, 324, 452, 506, 148 and 149 IPC(subsequently added Section 308 and 336 IPC), registered at Police Station Sadar Nawanshahar, District-Nawanshahar, on the basis of compromise dated 06.02.2015(Annexure P-4) and all other subsequent proceedings arising therefrom including the judgment of conviction and order of sentence, both dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, whereby the accused-petitioners, were convicted and sentenced...

xxx—xxx--xxx

Quashing of the aforesaid FIR and setting aside of the impugned judgment and order of sentence dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, is sought on the basis of compromise dated 06.02.2015 (Annexure P-4), entered into between the parties during the pendency of the appeal before this Court.

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*This Court in the case of **Sube Singh and another Versus State of Haryana and another 2013(4) RCR (Criminal) 102** has considered the compounding of offences at the appellate stage and has observed that even when appeal against the conviction is pending before the Sessions Court and parties entered into a compromise, the High Court is vested unparallel power under Section 482 Cr.PC to quash criminal proceedings at any stage so as to secure the ends of justice and has observed as under:-*

“15. The refusal to invoke power under Section 320 CrPC, however, does not debar the High Court from resorting to its inherent power under Section 482 Criminal Procedure Code and pass an appropriate order so as to secure the ends of justice.

16. As regards the doubt expressed by the learned

*Single Judge whether the inherent power under Section 482 Criminal Procedure Code to quash the criminal proceedings on the basis of compromise entered into between the parties can be invoked even if the accused has been held guilty and convicted by the trial Court, we find that in **Dr. Arvind Barsaul etc. v. State of Madhya Pradesh & Anr., 2008(2) R.C.R. (Criminal) 910 : (2008)5 SCC 794**, the unfortunate matrimonial dispute was settled after the appellant (husband) had been convicted under Section 498A Indian Penal Code and sentenced to 18 months' imprisonment and his appeal was pending before the first appellate court. The Apex Court quashed the criminal proceedings keeping in view the peculiar facts and circumstances of the case and in the interest of justice observing that "continuation of criminal proceedings would be an abuse of the process of law" and also by invoking its power under Article 142 of the Constitution. Since the High Court does not possess any power akin to the one under Article 142 of the Constitution, the cited decision cannot be construed to have vested the High Court with such like unparallel power.*

17. The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 Criminal Procedure Code with a view to prevent the abuse of law or to secure the ends of justice, however, is wide enough to include its power to quash the proceedings in relation to not only the non compoundable offences notwithstanding the bar under Section 320 Criminal Procedure Code but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.

18. xxx xxx

19. xxx xxx

20. xxx xxx

21. In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No.2) have also supported the amicable settlement, we are of

the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Non-acceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 Criminal Procedure Code after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.

22. Consequently and for the reasons afore-stated, we allow this petition and set aside the judgement and order dated 16.03.2009 passed in Criminal Case No. 425-1 of 2000 of Additional Chief Judicial Magistrate, Hisar, on the basis of compromise dated 08.08.2011 arrived at between them and their step-mother respondent No.2 (Smt. Reshma Devi) w/o late Rajmal qua the petitioners only. As a necessary corollary, the criminal complaint filed by respondent No.2 is dismissed qua the petitioners on the basis of above-stated compromise. Resultantly, the appeal preferred by the petitioners against the above-mentioned order dated 16.03.2009 would be rendered infructuous and shall be so declared by the first Appellate Court at Hisar.”

*Similarly, in the case of **Baghel Singh Versus State of Punjab 2014(3) RCR (Criminal) 578**, whereby the accused was convicted under Section 326 IPC and was sentenced to undergo rigorous imprisonment for two years, the parties entered into compromise during the pendency of the appeal. This Court while relying upon the judgment of **Lal Chand Versus State of Haryana, 2009 (5) RCR (Criminal) 838** and **Chhota Singh Versus State of Punjab 1997(2) RCR (Criminal) 392** allowed the compounding of offence in respect of offence under Section 326 IPC at the appellate stage with the observation that it will be a starting point in maintaining peace between the parties, such offence can be compounded.*

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Accordingly, FIR No.225, dated 24.08.2005 (Annexure P-1) under Sections 323, 324, 452, 506, 148 and 149 IPC(subsequently added Section 308 and 336 IPC), registered at Police Station Sadar Nawanshahar, District-Nawanshahar and all subsequent proceedings arising therefrom, qua the accused-petitioners, are quashed, on the basis of compromise dated 06.02.2015 (Annexure P-4), subject to payment of costs of Rs.25,000/-, to be deposited with the Punjab State Legal Services Authority, Chandigarh.

Consequently, the judgment of conviction and order of sentence, both dated 25.09.2013 passed by the learned Addl. Sessions Judge, Shaheed Bhagat Singh Nagar, are set aside subject to payment of cost.”

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 the Hon'ble Supreme Court in **Damodar S. Prabhu's case (supra)** and thus, as per settled law, this Court has the 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 fact that matter has been compromised and the compromise is bonafide and genuine and factum of the compromise has also been admitted by the learned counsel appearing for respondent No. 1-complainant who has separately filed an affidavit to the said effect and also, on account of the fact that the petitioner has deposited an amount of 15% of the cheque amount, this Court allows the present petition under Section 482 Cr.P.C. for quashing of the proceedings initiated with reference to complaint No. 18 dated 28.04.2001 under Section 138 of the Negotiable Instruments Act and all subsequent proceedings arising therefrom, on the basis of compromise. The judgment and order of sentence dated 14.05.2008 passed by the Sub Judicial Magistrate 1st Class, Garhshankar as well as the judgment dated 07.08.2012 and order dated 01.06.2015 passed by Sessions Judge, Hoshiarpur are set aside.

23.09.2021

Mehak

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No