

107-A

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

CRR-1773-2021 (O&M)

Date of decision : 23.12.2021

Rajinder Singh

...Petitioner

Versus

Sudesh Kumari and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Parveen Sharma, Advocate for the petitioner.

Mr. Vishal Goel, Advocate for respondent No.1.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision is to the judgment dated 02.06.2017 passed by the Judicial Magistrate Ist Class, Assandh (Karnal), vide which, on the complaint filed by Sudesh Kumari-respondent No.1 (herein) under Sections 138/142 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”), the petitioner had been convicted under Section 138 of the Act of 1881 and had been sentenced to undergo rigorous imprisonment for a period of one year and was also ordered to pay compensation of an amount of Rs.70,000/- to the complainant within a period of one month vide order of sentence dated 03.06.2017.

Challenge has also been made to the judgment dated 03.03.2020 vide which the appeal preferred by the present petitioner was dismissed for want of prosecution, by the Additional Sessions Judge, Karnal.

The brief facts of the case are that respondent No.1-Sudesh Kumari had filed a complaint under Sections 138/142 of the Act of 1881 against the petitioner for dishonour of cheque dated 20.08.2015 for an amount of Rs.70,000/-.

After considering the evidence and the documents on record, the Judicial Magistrate Ist Class, had convicted the petitioner under Section 138 of the Act of 1881 and had sentenced him to undergo imprisonment as has been stated hereinabove. An appeal preferred by the petitioner against the same was also dismissed for want of prosecution vide judgment dated 03.03.2020 passed by the Additional Sessions Judge, Karnal.

It is the said judgment which is under challenge in the present Criminal Revision.

Alongwith the present Criminal Revision, an application bearing CRM-44426-2021 has been filed under Section 320 read with Section 482 of Cr.P.C. for compounding of the offence. In the application, it has been submitted that the matter has been compromised and with respect to the same, affidavit dated 11.12.2021 of Sudesh Kumari has also been referred to, as per which, the said Sudesh Kumari had specifically submitted that nothing is due towards the petitioner and the complainant has no objection in case the bail is granted to the petitioner and the case is closed.

Learned counsel for the petitioner has submitted that since the

matter has been compromised, thus, as per the judgment of the Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal**, reported as **AIR 2010(SC) 1097**, the present Criminal Revision be allowed and the judgment of conviction and order of sentence be set aside. It is submitted that in accordance with the judgment of the Hon'ble Supreme Court in **Damodar S. Prabhu's** case (Supra), the petitioner is ready to deposit an amount of Rs.10,500/- which is 15% of the cheque amount of Rs.70,000/- within a period of one month.

Learned counsel for respondent No.1/complainant who is presented in the Court has reiterated the fact that the matter has been compromised and has stated that affidavit dated 11.12.2021 (Annexure P-1) is genuine and bona fide and has been entered into without any coercion and undue influence and has no objection in case the present criminal revision is allowed and the judgment of conviction and order of sentence passed against the petitioner is set aside.

This Court has heard the learned counsel for the parties and has perused the paper book.

The petitioner was convicted vide judgment dated 02.06.2017 under Section 138 of the Act of 1881 and was sentenced to under rigorous imprisonment for a period of one year and had also been directed to pay compensation to the tune of Rs.70,000/-. An appeal against the same was dismissed for want of prosecution by the Additional Sessions Judge, Karnal. In the present Criminal Revision, an application has been moved for compounding of offence under Section 320 read with Section 482 of Cr.P.C. and affidavit of respondent No.1 has also been annexed. The contents of the

said affidavit are reproduced hereinbelow:-

“I, Sudesh Kumari wife of Sh. Karam Chand son of Rup Chand, age 50 years, resident of village Balla, Tehsil Assandh, district Karnal, do hereby solemnly affirm and declare as under:-

- 1) That I am permanent resident of above noted address.*
- 2) That I had filed a complaint No.07/2016 against Rajinder Singh son of Sh. Maan Singh, resident of village Bahri, district Karnal under section 138, 142 of NI Act in the courts at Assandh, in which the Hon'ble court of Sh. Sohan Lal Malik has awarded the sentence to accused on 02.06.2017.*
- 3) That the accused Rajinder Singh has filed appeal against the order dated 02.06.2017 in the courts at Karnal, which dismissed by the Hon'ble Judge and now the accused is confined in Jail at Karnal.*
- 4) That now the compromise has been effected with the accused in complaint case No.06/2016 and nothing is due to be received from the accused.*
- 5) That now I do not want to take any action regarding complaint No.06/2016.*
- 6) That I have no objection if the bail is granted to the accused in the above said complaint and to close the case.*
- 7) That I am responsible for my above said facts mention in this affidavit.*

Sd/- Sudesh Kumari

Deponent”

A perusal of the said affidavit would show that the complainant had submitted that the matter has been compromised and she has no objection in case, the petitioner is granted bail and the matter is closed. Both

the counsels have jointly submitted that the said compromise is genuine and bona fide.

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 Hon'ble Supreme Court in ***Damodar S. Prabhu's*** case (***supra***) and thus as per settled law, this Court has 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 abovesaid facts and circumstances, judgment of conviction dated 02.06.2017 and order on quantum of sentence dated 03.06.2017 passed by the Judicial Magistrate Ist Class, Assandh, as well as the judgment dated 03.03.2020 passed by the Additional Sessions Judge, Karnal are set aside and the present criminal revision petition is allowed in terms of the compromise and the same would be subject to the petitioner depositing an amount of Rs.10,500/- within a period of one month from today with the High Court Lawyers' Welfare Fund.

However, it is made clear that in case the petitioner does not deposit an amount of Rs.10,500/- within a period of one month from today with the High Court Lawyers' Welfare Fund, the present criminal revision would be deemed to have been dismissed.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

23.12.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No