

CRR-424-2020 (O&M)

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

**CRR-424-2020 (O&M).
Date of decision: May 12, 2022.**

Ravi

...Petitioner

Versus

M/s Shiv Shakti Sales Corporation and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

**PRESENT: Mr.Manoj K. Tanwar, Advocate,
for the petitioner.**

**Mr.Ishan Khetarpal, Advocate,
for the respondent.**

VIKAS BAHL, J. (ORAL)

Challenge in the present revision petition is to the judgment dated 5.10.2016 vide which the learned Sub Divisional Judicial Magistrate, Guhla, has convicted the petitioner under Section 138 of the Negotiable Instruments Act, and has sentenced him to undergo rigorous imprisonment for a period of one year and has further ordered compensation of Rs.4,25,000/- to be paid to the complainant. Challenge is also to the judgment dated 4.2.2020, vide which the appeal filed by the petitioner has been dismissed by the Additional Sessions Judge, Kaithal.

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Brief facts of the case are that the complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, with respect to the dishonour of cheque No.399663 dated 19.2.2015, for an amount of Rs.3,90,000/- and after the said dishonour, legal notice was given and on account of the petitioner not discharging his liability, the complaint under Section 138 of the Negotiable Instruments Act, was filed. The complainant had appeared as CW-1 and Sonu Kumar had appeared as CW-2.

After considering the entire evidence, the petitioner was convicted and the appeal of the petitioner thereafter, was also dismissed.

On 22.4.2022, when the matter came up for hearing, the following order was passed:-

“Learned counsel for the petitioner and respondent No. 1 have submitted that both the parties want to make an effort to finally compromise the matter and have prayed that the present case be referred to the Mediation and Conciliation Centre of this Court.

Accordingly, the matter is referred to the Mediation and Conciliation Centre of this Court.

Parties are directed to remain present before the said Forum on 26.04.2022.

Adjourned to 12.05.2022, for awaiting report of the Mediation and Conciliation Centre.”

In pursuance of the said order, the matter was referred to the Mediation and Conciliation Centre and in the Mediation and

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Conciliation Centre, the parties have arrived at a compromise. The relevant portion of the compromise/settlement dated 26.4.2022, is reproduced as under:-

“7. The following settlement has been arrived at between the Parties hereto:

a) That the parties compromised the matter for a sum of Rs.2.50,000/ (Rupees Two Lacs and Fifty Thousand only). Both the parties have agreed that the said amount is full and final payment and no further claim will be made by the second party against the first party in the present case.

b) It has been agreed that the amount of Rs.2.50,000/- (Rupees Two Lacs and Fifty Thousand only) shall be paid by the first party to the second party in the following manner:

(i) An amount of Rs.50,000/- (Rupees Fifty Thousand only) in cash has been paid by the first party to the second party/respondent No.1 today in the Mediation Centre, which has been accepted by the second party/respondent No.1.

(ii) That the first party undertakes to pay the balance amount of Rs.2,00,000/- (Rupees Two Lacs only) to the second party/respondent No.1 in twenty equal instalments of Rs.10,000/- (Rupees Ten Thousand only) each in cash every month starting from June, 2022 onwards to January, 2024.

c) That both the parties have agreed that they have no objection, if the present case is disposed of by the Hon'ble High Court in view of the compromise arrived at between the parties.

d) This compromise has been reached between the parties in the present case only without any pressure and both the parties have very happily agreed to abide by the terms and conditions of the agreement. Both the parties shall be bound with the terms and conditions of this compromise. That in case the first party does not abide to the terms and conditions of the abovesaid settlement, then the second party will be at liberty to take its recourse as per law or re-open the present case.

e) The parties further undertake not to initiate or institute any unwanted litigation against each other and their family arising out of the matter in dispute. The parties further undertake not to use any document etc. against each other which have been left in their possession after this date of agreement or used as an evidence against each other in Court of Law.

8. It has been further decided between the parties that in case of necessity, both the parties shall be free to present the copy of the above compromise before any authority or court if the same is required to witness the execution of the compromise or to settle any pending controversy between the parties.

9. *The parties have gone through the contents and the same have been explained to the parties and after admitting the same as correct, have put their respective signatures.*

10. *The copy of the settlement is being handed over to both the parties.*

First Party

Vikram Kumar, (brother of petitioner Ravi, who is in custody)

Aadhar Card No.939375903784

*Ram Meher son of Virbhan,
brother-in-law of petitioner*

*Sh. Manoj Tanwar, Advocate,
Counsel for the petitioner.*

Second Party

*Chanky Goel-Respondent No. I
Aadhar Card No. 945649922881*

Manish Jindal-Cousin

*Sh. Ishan Khetarpal, Advocate
Ishan Khetarpel Counsel for the respondent No.1*

26.04.2022

*Aarti Gupta,
Mediator.”*

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A perusal of the said compromise would show that both the parties agreed that they have no objection in case the present revision petition is disposed of by the High Court in view of the compromise arrived at between the parties.

Learned counsel appearing for the petitioner as well as for the complainant have jointly submitted that the compromise is genuine and bona fide and without any undue pressure and have further submitted that the present petition be allowed and the judgments passed by the Courts below be set aside.

Learned counsel for the petitioner has further submitted that the petitioner is a very poor person and is the sole bread earner of the family. Petitioner has three minor children out of which his daughter aged 15 years is handicapped and the minor son who is 6 years old has lost vision of one eye. It is submitted that the petitioner with great difficulty has collected money for the purpose of present compromise and out of one year of sentence, the petitioner has already suffered custody period of 8 months and 25 days and the total custody period of the petitioner including the remission is 10 months and 9 days, as he could not arrange the money earlier. It is also submitted that the petitioner is not involved in any other case and has prayed that 15% of the cheque amount may be exempted.

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

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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.1 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.*

*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*

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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”.

In the present case, as has been highlighted by the learned counsel for the petitioner, the petitioner is a very poor person and is the sole bread earner of the family. He has three minor children out of which his daughter aged 15 years is handicapped and the minor son who is 6 years old who has lost vision of one of his eyes. The petitioner with great difficulty has collected money for payment as per compromise/settlement and out of one year of sentence awarded to him, he has suffered custody period of 8 months and 25 days and the total custody period undergone by the petitioner including the remission is of 10 months and 9 days. Moreso, the petitioner is not involved in any other case.

Thus, from the above facts, it is clear that the present case is an exceptional case in which the payment of 15% of the cheque amount deserves to be exempted.

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.

Keeping in view the above said facts and circumstances, the present criminal revision petition is allowed and the judgment dated 5.10.2016 as well as the order of sentence dated 6.10.2016 as also the judgment dated 4.2.2020, are set aside. The parties would be bound by the

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compromise.

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

May 12, 2022.
raj arora

(VIKAS BAHL)
JUDGE

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