

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-210-2021 (O&M)
Date of decision: 28.04.2022

Raj Kumar Kashyap
...Petitioner(s)
Versus
Surinder Kumar Tayal
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. S.S. Sidhu, Advocate
for the petitioner.

Mr. Yogesh Aneja, Advocate
for the respondent(s).

ANOOP CHITKARA, J.

Criminal Complaint	No. 93-2 of 04.03.2013/30.04.2013 (CIS No.NACT/2331/2013 under Section 138 of the Negotiable Instruments Act, District Fazilka
Criminal Appeal	No. 28 of 2016 Additional Sessions Judge, District Fazilka

CRM No.5971-2021:

The application is allowed, as prayed. Delay of 276 days in filing the present revision petition is condoned.

CRR-210-2021:

1. The petitioner, who stands convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (NIA) has come up before this Court under Section 482, Code of Criminal Procedure, (CrPC) for quashing the proceedings because the parties have compromised the matter.
2. The petitioner faced criminal prosecution by the private respondent,

because of the dishonour of the cheque in question.

3. On 26-04-2022, this court had passed the following order:-

“The parties have settled the matter out of Court.

Learned counsel for the petitioner submits that the petitioner is willing to transfer the settled amount i.e. Rs.2,50,000/- through bank transfer or electronic mode in account of the respondent by tomorrow.

List on 28.04.2022.

Learned counsel for the respondent to have instructions. In case settlement took place between the parties, there is no necessity for the parties to appear before the learned Illaqa Magistrate.”

4. Today, Id. counsel for the petitioner has handed over a demand draft no.348673 to Id. counsel appearing for the complainant-respondent in the Court. Id. counsel for the convict states that the party's presence to make statements before the trial court qua factum of compromise be dispensed with.

5. Id. counsel for the complainant respondent submitted that the respondent is the sole aggrieved party and it was a private complaint, and now the matter stands settled finally. Id. counsel on instructions further submitted that the complaint/respondent has no objection if the conviction is set aside based on this compromise. He further states that the complainant's presence to make a statement before the trial court qua factum of compromise may be dispensed and waived.

6. In the background of the offence, after considering the prayer of both the Id. counsel for both the parties, this court dispenses with the presence of the complainant and even the petitioner/convict and accepts the statements of Id. counsel in lieu of their statements.

7. The jurisprudence behind the Negotiable Instruments Act, 1881 is that the business transactions are to be honoured. The legislative intention is not to make people suffer incarceration only because their cheques bounced. These proceedings are to recover the cheque amount by showing teeth of a penal clause.

8. Given the judgment passed by Hon'ble Supreme Court of India

in Damodar S. Prabhu v Sayed Babalal, (2010) 5 SCC 663, the law is well settled that when the entire money is paid, then the complainant cannot have any objection to such compromise, and 15% of the cheque amount is to be paid by the accused to the concerned State Legal Services Authority.

9. Given above, because of the compromise, this is a fit case where the inherent jurisdiction of the High Court under Section 482 read with Section 401 of the CrPC supported by Section 147 of the NIA is invoked to disrupt the prosecution and quash the proceedings mentioned above. The complaint, notice of accusation, judgment of conviction, and the proceedings captioned above are quashed and set aside. The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

10. The petitioner has filed an affidavit dated 26 April 2022, for dispensing with the 15% amount payable to the State Legal Aid Authority. The relevant paragraphs of the said affidavit read as follows:-

- “1. That I am joint owner of one residential house bearing size 22x25 sq. feet with my deceased brother. The said house stands pledged with ICICI Bank by both brothers. In which both families of me and my deceased brother and parents are residing in above said house.
2. That I am the defaulter of above said ICICI Bank and my deceased brother.
3. That there is no any other movable and immovable property in my name nor in the name of my wife and children.
4. That I do not have any liquidated funds in form of FD, Saving Account, Gold & Silver Articles etc.
5. That amount of Rs.2,50,000/- is arranged from relatives and friends.”

11. Ld. Counsel for the petitioner stated that the petitioner is virtually on roads and the draft amount was given by his relatives. Given the contents of the affidavit, the financial condition of the petitioner is itself so bad, that he needs financial aid. I am satisfied that the amount at the rate of 15% would cause great hardship to the petitioner. Thus, the equity and compassion demand that the amount is waived.

12. In Damodar S. Prabhu v Sayed Babalal, (2010) 5 SCC 663, Hon’ble Supreme

Court holds,

[17]. “...Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance.”

13. Consequently, the above-captioned complaint, notice of accusation, and all consequent proceedings are quashed and the petitioner shall stand acquitted of all the offences captioned above. All pending applications are closed.

Petition allowed in the terms mentioned above.

(ANOOP CHITKARA)
JUDGE

April 28, 2022
Rittu/AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.