

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

CRM-27996-2022 IN/AND
CRR-643-2022 (O&M)
Decided on : 05.08.2022

Baljit Singh

. . . Petitioner

Versus

Gurdev Singh and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Davinder Singh Khurana, Advocate
for the petitioner.

Mr. Vipul Babuta, Advocate
for respondent No. 1.

Mr. Sukhbeer Singh, AAG, Punjab
for respondent No. 2-State.

VIKAS BAHL, J. (Oral)

CRM-12895-2022

This is an application filed under Section 5 of the Limitation Act for condonation of delay of 16 days in filing the present revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 16 days in filing the present revision petition is condoned.

CRM-27995-2022

For the reasons mentioned in the application, same is allowed subject to all just exceptions and Annexures P-1 to P-3 are taken on record.

Main case

Challenge in the present revision petition is to the judgment dated 21.07.2017 passed by the Judicial Magistrate 1st Class, Jalalabad vide which the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') and has been sentenced to undergo rigorous imprisonment for a period of one and a half year alongwith a fine of Rs.3,000/- and in default of payment of fine, had been directed to further undergo R.I. for a period of one month.

Challenge is also to the judgment dated 03.01.2020 vide which the appeal filed by the petitioner against the said judgment has been dismissed and the sentence has been upheld.

Brief background of the present case is that the respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 with the allegation that a loan had been taken by the present petitioner of an amount of Rs.3,70,000/- for domestic purposes on 01.02.2014 and in order to repay the same, the cheque dated 16.12.2014 for Rs. 3,70,000/- was issued by the petitioner from his saving account. When the said cheque was dishonored with the remark "Funds Insufficient" and thereafter, the legal notice was issued on 23.01.2015 and since despite the same, the payment was not made, the present complaint was instituted. As stated hereinabove, both the courts below had consonantly found the petitioner guilty of the offence under Section 138 of the NI Act and had sentenced him as mentioned hereinabove.

Learned counsel for the petitioner and respondent No. 1 have

jointly submitted that during the pendency of the present revision petition, a compromise has been effected between the parties and thus, an application has been moved i.e. CRM-27996-2022 under Section 320 Cr.P.C. read with Section 482 Cr.p.C. for compounding of the offence under Section 138 of the NI Act. In the said application, it has been stated that the matter has been compromised and the amount of Rs.3,70,000/- has been repaid to the complainant. The relevant portion of the compromise dated 30.07.2022, which has been highlighted, is reproduced hereinbelow:

“1. That with the intervention of the respectable persons of society and our locality and relatives of both the parties, the compromise has been affected between :

First Party Complainant : Gurdev Singh s/o Hazara Singh r/o Khamba, Tehsil & District Ferozepur.

AND Second Party Accused: Baljit Singh s/o Balbir Singh r/o village Dhab Khushal Joyian, Post Office Chak Vairo Ke, Tehsil Jalalabad(w), District Fazilka.

xxx--xxx--xxx

- 3. That now compromise has been affected between the parties and first party have no objection if both the judgments are set aside by the Hon'ble Court on the basis of compromise and the sentence may be suspended in view of the compromise.*
- 4. That the first party undertakes to file an application for compounding of offence and set aside both the judgments.*
- 5. That first party undertakes to file any application for the quashing of both the judgments.*
- 6. That the first party have received the whole cheque amount i.e. **Rs. 3,70,000/- (Rs. Three Lacs Seventy Thousand only)** from the second party and in this way*

nothing is due of first party towards the second party.

7. That both the parties pledge to sustain good relation with each other in future.

8. That both the parties are satisfied with the compromise and do not have any grudge.

9. That the compromise has been arrived at between the party without any threat, pressure and coercion etc from any side. The only motive is to sustain good relation.

Dated: 30.07.2022

First Party

Second Party

*Sd/-
Gurdev Singh*

*Sd/
Baljit Singh”*

A supporting affidavit of Gurdev Singh has also been annexed as Annexure P-2 with the said application.

It has been averred in the application and has been argued by the learned counsel for the petitioner that the petitioner has been in custody since 21.01.2022 and has no employment on account of COVID-19 pandemic and it is with great difficulty, that after taking a loan of Rs.3,00,000/- on 28.07.2022 from his nephews namely Rishav Singh, Sunny Singh and after selling one buffalo, the petitioner has been able to make the repayment of Rs.3,70,000/-. It is submitted that the petitioner has two sons and both are studying in government school and there is no one in his family who is earning and has thus, prayed that the petitioner may be exempted from paying 15% of the cheque amount. 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 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 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 dishonor 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.

xxx—xxx--xxx

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”.

In the abovesaid case, the petitioner therein had stated to have exhausted her entire resources, and thus, was not in a position to deposit the cost.

In the present case, as is apparent from the abovesaid facts, the petitioner has been in custody since 21.01.2022 and is stated to be unemployed and has two sons who are studying in a government school and regarding the same, the identify cards have been annexed as Annexure P-3 along with the said application. It is the case of the petitioner that he has been able to return the amount of Rs.3,70,000/- after taking a loan from his two nephews namely Rishav Singh, Sunny Singh and after selling one buffalo and the said loan had been taken through RTGS and the petitioner has been unemployed on account of the COVID-19 pandemic. The fact that the petitioner is suffering from a financial crisis is also apparent from the fact that the respondent has agreed to settle the matter for an amount of Rs.3,70,000/-, which was the amount of the cheque in question, which had been issued in the year 2014.

Thus, keeping in view the said special facts and circumstances, this Court deems it appropriate that the cost should not be imposed upon the present petitioner.

A perusal of the compromise, the relevant portion of which is reproduced hereinabove, would show that it is specifically stated by the respondent that he has no objection in case both the judgments of the Courts below are set aside.

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.

Thus, keeping in view the abovesaid facts and circumstances, the present petition is allowed and impugned judgment dated 21.07.2017 and the order of sentence of even date as well as the judgment dated 03.01.2022 is set aside and the offence under Section 138 of the NI Act stands compounded and application bearing No. CRM-27996-2022 is allowed.

(VIKAS BAHL)
JUDGE

05.08.2022
Mehak

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No