

109

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

CRR-623-2022 (O&M)

Date of decision : 04.04.2022

Manjeet Kaur

...Petitioner

Versus

Anita and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.S. Bajaj, Advocate for the petitioner.

Mr. Tarun Sharma, Advocate for respondent No.1.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision is to the judgment dated 02.06.2018 vide which the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and has been sentenced to undergo rigorous imprisonment for a period of two years for the offence under Section 138 of the Act of 1881 and has also been directed to pay the compensation to the tune of cheque amount i.e. Rs.5,00,000/-.

Challenge has also been made to the judgment dated 02.03.2022 vide which the appeal preferred by the present petitioner has been dismissed.

The facts of the present case are that respondent No.1 had given a friendly loan of Rs.5,00,000/- to the petitioner and in order to repay the said loan amount, the petitioner had issued cheque No.467521 dated 17.12.2016 for an amount of Rs.5,00,000/- drawn on State Bank of India, Railway Station, Jalandhar against her Saving Account No.20149640997 in favour of the complainant. The said cheque was dishonoured and returned with the remarks “funds insufficient” and legal notice dated 22.12.2016 was issued to the petitioner under Section 138 of the Act of 1881 and after the stipulated period was over and the petitioner had not paid the money, the complaint under Section 138 of the Act of 1881 was filed.

Learned trial Court, after considering the evidence and documents on record, convicted the petitioner under Section 138 of the Act of 1881. An appeal was filed by the petitioner against the said judgment but the same was also dismissed and the conviction of the petitioner under Section 138 of the Act of 1881 was upheld and the sentence awarded by the trial Court was also upheld.

Learned counsel for the petitioner has submitted that in the present case, the compromise has been effected between the parties on 03.06.2020 (Annexure P-1) which is at page 56 of the paper book and after seeing the poor financial condition of the petitioner, the complainant had agreed to finally settle the matter for an amount of Rs.2,50,000/- which was the half the amount of the cheque. It is further submitted that as per the said compromise, an amount of Rs.1,30,000/- was paid in cash

and thereafter, the cheques were issued for the repayment of the balance amount. It is contended that it was further agreed that the complainant would have no objection if appeal filed by the petitioner before the Appellate Court is allowed and the conviction is set aside in view of the said compromise. It is further contended that on account of the communication gap, however, the said compromise could not be brought to the notice of the Appellate Court. It is argued that the entire money as per the compromise i.e. Rs.2,50,000/- has been paid to the complainant as the matter has been fully and finally settled. It is also submitted that the petitioner is a very poor person and the said fact is apparent from the fact that even the complainant in the case has compromised the matter by receiving an amount of Rs.2,50,000/-, although, the amount of Rs.5,00,000/- was due from the petitioner.

Learned counsel for the petitioner has also submitted that in the present case, the petitioner would not be in a position to pay 15% of the cheque amount as the petitioner is a 51 year old lady and has no source of livelihood and with great difficulty, has been able to repay the amount of Rs.2,50,000/- to the complainant. 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 .

Notice of motion.

On advance notice, Mr. Tarun Sharma, Advocate appears and accepts notice on behalf of respondent No.1 and Mr. Sarabjit S. Cheema, AAG, Punjab, accepts notice on behalf of the State and have submitted that they are fully prepared to argue the matter and assist this Court.

Learned counsel for the complainant has filed an affidavit of Anita/respondent No.1/complainant, today in the Court, which is taken on record and the same is marked as Mark "A". He has further submitted that the entire amount i.e. Rs.2,50,000/-, as per the compromise, has been received by the complainant and the complainant has no objection if the offence under which the petitioner has been convicted is compounded and the petitioner is acquitted of the charges framed against him.

Learned counsel for complainant-respondent No.1 has also stated that complainant has no objection in case the said amount of 15% is waived off in view of the special circumstances in the present case.

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

It is admitted case of the parties that the petitioner was convicted under Section 138 of the Act of 1881 for the dishonour of the cheque in question of an amount of Rs.5,00,000/-. The compromise has been effected between the parties and as per the said compromise, an amount of Rs.2,50,000/- as full and final settlement has been agreed between the parties and the said amount has admittedly been paid to the

complainant. The complainant has agreed to take the amount of Rs.2,50,000/- as full and final settlement on account of the poor financial condition of the petitioner, although, Rs.5,00,000/- is due from the petitioner. With respect to the said aspect, an affidavit of Anita/respondent No.1/complainant has been submitted by learned counsel for the complainant/respondent No.1 which is taken on record and marked as Mark "A". The same is reproduced hereinbelow:-

"Affidavit of Smt. Anita wife of Sh. Sat Pal, resident of house No.34/2, Kamal Vihar, Near Bashirpura, Jalandhar.

I the above named deponent do hereby solemnly affirm and declare as under:

- 1. That the deponent had filed a criminal complaint bearing NACT No.529 of 2017 against the petitioner Manjeet Kaur under Section 138 of Negotiable Instrument Act on 17.01.2017. In the said case, petitioner had been convicted by the Court of Ms. Supreet Kaur, JMIC Jalandhar vide judgment dated 2.6.2018.*
- 2. That petitioner had preferred appeal against the said judgment before Id. Sessions Judge Jalandhar. During pendency of the said appeal, friends and well wishers intervened and got the matter compromised between the petitioner and the deponent. As per the said compromise, petitioner had agreed to pay a total sum of Rs.2,50,000/- to the deponent as full and final settlement amount towards all the claims of the deponent against the dishonoured cheque. Deponent had agreed to the same keeping in view the poor financial condition of the petitioner and she agreed to waive off the balance amount.*
- 3. That in pursuance to the said compromise, petitioner paid a sum of Rs.1,30,000/-in cash to the deponent.*

Petitioner also issued six cheques in favour of the deponent for payment of the balance amount of Rs.1,20,000/-. Petitioner had agreed that she will pay the amount of Rs.20,000/- in cash to the deponent against each cheque on or before the due date mentioned on the cheques and upon payment of the said cheque amount, she will get back the respective cheques from the deponent. A compromise deed in this regard was also reduced into writing on 3.6.2020.

4. That the first three instalments of Rs.20,000/- each were cleared by the petitioner in July, September and November 2020. However she could not pay the instalments due for the months of January, March and May 2021 citing acute financial hardships due to covid 19 pandemic. She approached the deponent and requested for extension of time for payment of the said instalments. She promised to pay the pending instalments on 25.01.2022, 25.02.2022 and 10.03.2022 to which the deponent agreed. Accordingly, an endorsement to that effect was made on the back of the said compromise on 25.5.2021 (Annexure P-1). In terms thereof, petitioner made the payments due in January and February 2022.

5. That in terms of the said compromise, after payment of the last instalment on 10.3.2022, deponent was to withdraw the complaint. Under that impression, she did not convey the factum of compromise to her counsel. On 2.3.2022, Id. Lower Appellate Court dismissed the appeal filed by the petitioner.

6. That in terms of the compromise arrived at between the petitioner and the deponent, she does not want to pursue her complaint filed against the petitioner. The Deponent has no objection if the offence for which petitioner has

been convicted is compounded and she is acquitted of the same since deponent has compromised the matter with the petitioner.

JALANDHAR

Sd/- (ANITA)

01/04/2022

DEPONENT”

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 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.

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, the fact that the petitioner has a poor financial condition is apparent from the fact that the complainant has agreed to finally settle the matter for an amount of Rs.2,50,000/-, although, the cheque was for an amount of Rs.5,00,000/-. The petitioner

is a 51 year old lady who is stated to be having no source of livelihood and with great difficulty, she has repaid the amount of Rs.2,50,000/- to the complainant.

Keeping in view the said special facts and circumstances, this Court deems it appropriate that no costs should be imposed upon the present petitioner.

It is settled law that 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.

Keeping in view the abovesaid facts and circumstances, the present Criminal Revision is allowed and judgment dated 02.06.2018 as well as judgment dated 02.03.2022 are set aside and the petitioner is acquitted of the charges framed against him.

Since, the main case has been decided, application bearing CRM-12526-2022 for suspension of sentence of applicant-petitioner is rendered infructuous and is disposed of as such.

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

04.04.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No