

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR No. 915 of 2022 (O & M)
Date of decision : 7.5.2022

Satnam Singh

.....Petitioner

Vs.

M/s Malwa Financers

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present : Mr. M.L. Saggar, Senior advocate with
Ms. Armaan Saggar, Advocate and
Mr. Rohit Joghi, Advocate, for the petitioner

Mr. G.P. Vashist, Advocate, for the respondent

VIKAS BAHL, J. (Oral):

Challenge in the present criminal revision is to the judgment dated 21.4.2017, vide which, the petitioner has been convicted in a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as 'the Act'), and has been sentenced as under :

“Accordingly, convict is sentenced as follows :

Sr. No.	Name of Convict	Under Sections	Imprisonment	Fine, if any	In default of payment of fine
1	Satnam Singh	138 of N.I.Act	Two years RI	Rs.2000/-	One month SI

Period of custody, if any, undergone by the accused during the investigation and trial be set off.”

Challenge is also to the judgment dated 17.3.2022, vide which the Additional Sessions Judge, Ludhiana has upheld the said conviction and the sentence.

Learned Senior counsel for the petitioner has submitted and has referred to CRM No. 16942 of 2022, which is an application under Section 482 Cr.P.C. read with Section 147 of the Act for allowing the compounding of offence under Section 138 of Act on account of the fact that after the passing of the said judgment, a compromise dated 30.4.2022 (Annexure A-1) has been entered into between the parties and the entire dispute has been finally resolved.

Brief background of the case is that respondent had filed the complaint under Section 138 of the Act, on account of dishonour of cheque dated 23.7.2013 for an amount of Rs.1,20,000/- issued in favour of the complainant. The same was dishonoured with the remarks 'insufficient funds'. After giving the statutory notice, when no money was paid by the petitioner, the complainant instituted the complaint under Section 138 of the Act.

The trial Court, after considering the entire evidence on record, convicted the petitioner under Section 138 of the Act and sentenced the petitioner as stated hereinabove.

The Additional Sessions Judge, Ludhiana, after re-considering the entire matter, perusing the documents and evidence on record, upheld the said conviction.

After the passing of the said judgments, the matter has been compromised between the parties as is apparent from the detailed compromise dated 30.4.2022 (Annexure A-1). The said compromise is reproduced herein below :

“Compromise between the petitioner and respondent -M/s Malwa Financers through its proprietor Shri Harjit Singh.

1. That the petitioner has filed the above mentioned CRR in the

Hon'ble High Court challenging the order dated 21.4.2017 passed by Sub Divisional Judicial Magistrate, Jagraon upheld by the learned Additional Sessions Judge, Ludhaina vide judgment dated 17.3.2022. The petitioner has been convicted u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act). The petitioner has been ordered to undergo a sentence of 2 years RI and a fine of Rs.2000/-and in default to undergo simple imprisonment for one month.

2. That the petitioner was doing the Tent Business. The petitioner had in the year 2014 obtained a loan of Rs.1,35,000/-from M/s Malwa Financiers. The petitioner had issued cheque No. 275461 dated 20.7.2013 for Rs.1,25,000/-to pay the loan amount. The cheque was dishonoured. The respondent as proprietor of M/s Malwa Financiers had filed a complaint under Section 138 of the Act for dishonouring the cheque No. 275461 dated 20.7.2013. The complaint was contested by the petitioner that he had already returned the amount. The learned JMIC, Jagraon vide judgment dated 21.4.2017 dismissed the complaint and acquitted the respondent. The concern through respondent has filed CRA No. 2022 MA of 2017 in the Hon'ble Court.

3. That Harjit Singh, proprietor of M/s Malwa Financiers filed criminal complaint No. 115 dated 24.9.2013 regarding dishonouring of cheque No. 275463 dated 23.7.2013 for a sum of Rs.70,000/-. It was stated that the petitioner had taken a loan of Rs.1.00 lac on 6.9.2012 on the basis of pronote and receipt. The cheque was issued to pay the amount. The learned Judicial Magistrate Ist Class vide judgment dated 21.4.2017 convicted the petitioner to undergo RI for two years and fine of Rs.2000/-and in default to suffer the sentence of one month. The petitioner had filed appeal bearing CIS No. CRA363 of 2017 and the same was dismissed on 17.3.2022 by the learned Additional Sessions Judge, Ludhiana.

4. That the respondent concern through Harjit Singh had filed another complaint under Section 138 of the Act for dishonouring of cheque No. 275463 of Rs.1,20,000/-. The petitioner was convicted to suffer sentence of two years RI and fine of Rs. 2000/- in default. The petitioner had filed appeal bearing CIS No. CRA 362 of 2017 and the same was dismissed on 17.3.2022 by the learned Additional Sessions Judge, Ludhaina.

5. That the petitioner has filed the Criminal Revision petitions in the Hon'ble Court.

6. That due to the prevailing circumstances due to Covid, the petitioner had suffered a lot. However, with the intervention of the respectable and well wishers of the parties, the matter has been settled out of Court. Sh. Harjit Singh, proprietor of respondent-concern has agreed to receive Rs.2,60,000/-to put an end to the litigation in three cases mentioned above. Harjit Singh, proprietor of Malwa Financiers has received a sum of Rs.60,000/-in cash. The remaining amount of Rs. 2 lac is to be received by him in the Hon'ble Court payable by draft No. 124590 dated 28.4.2022 drawn on Bank of Baroda, Jagraon Branch. The photocopy of the draft has been handed over to Harjit Singh. The photocopy of the draft is also attached.

7. That in view of the compromise, the above noted CRR may be allowed along with the connected revision petition. The judgments of the learned JMIC Jagraon dated 21.4.2017 and that of the learned Additional Sessions Judge, Ludhiana dated 17.3.2022 may kindly be set aside and the petitioner may kindly be acquitted.

8. That the compromise has been entered into in order to pay an end to the litigation and to maintain cordial relations.

Notice :-Affidavit of Harjit Singh is attached.

Dated : 30.4.2022

Petitioner
through
Sd/-
(Sunny Saggar)
Advocate

Respondent
through counsel
Sd/-
(G.P.Vashist)
Advocate”

Learned counsel appearing for the respondent has submitted that the said compromise is genuine and bona fide and had been entered into without any coercion or undue influence and has further submitted that he has no objection in case the present criminal revision is allowed and the impugned judgments are set aside.

Learned senior counsel for the applicant/petitioner has further submitted that in the present case, the petitioner would not be in a position to

pay 15% of the cheque amount as, on account of COVID-19 pandemic, the petitioner had suffered irreparable loss and even the tent business which the petitioner was doing on a small scale, has completely finished and in fact, the family members of the petitioner had to sell their tables and chairs in order to collect the money so as to pay the complainant for the purpose of the present compromise.

In the present case, as per the complainant, although more money was due to him but he settled the matter for Rs.2.60 lakhs as he is aware of the financial condition of the petitioner. The said fact also gives weight to the argument of learned Senior Counsel for the petitioner that the financial position of the petitioner is not in a good state and he will not be able to pay 15% of the penalty amount.

Reliance in this regard has been made to the paragraph 17 of the judgment passed by the Hon'ble Supreme Court in **'Damodar S. Prabhu v. Sayed Babalal H.; 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 he has no objection in case the said amount of 15% is waived off, in view of the special circumstances of the present case.

Learned State counsel has stated that since the present case is under Section 138 of the Act and the matter has been compromised, he would have no objection in case the criminal revision 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 Act. 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's case** (supra) and in view of the facts and circumstances of the said case, did not impose cost. The relevant portion of the said judgment 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's case** (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 and in view of the same, a Coordinate Bench of this Court had waived the cost.

In the present case, the petitioner was stated to be running a Tent house and on account of COVID-19 pandemic, his business had completely finished and it is the case of the petitioner that his family had to sell their tables and chairs so as to collect money to pay the complainant so as to compromise the matter with him. The fact that the complainant has agreed to finally settle the matter for an amount of Rs.2,60,000/- with respect to all the three cheques i.e. For Rs.1,25,000/-, Rs.70,000/-and for Rs.1,20,000/-, for a total amount of Rs.2,60,000/-, also shows that the financial position of the petitioner is not in a good state.

Learned counsel for the respondent has also submitted that on account of said financial position they agreed to finally settle the matter in all three cases for an amount of Rs.2,60,000/- and thus, in view of the said averments as well as keeping in view the special facts and circumstances of the present case, this court deems it appropriate that cost should not 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.

Thus, keeping in view the facts and circumstances, the present criminal revision petition is allowed and the judgment of conviction and sentence dated 21.4.2017, as well as, the judgment dated 17.3.2022 are set aside.

It is also stated that as per the compromise, the draft of Rs. 2 lakhs

has been handed over to learned counsel for the complainant, who has further handed over the same to the complainant, who is present in Court.

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

(VIKAS BAHL)
JUDGE

7.5.2022
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No