

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(261-2)

CRR-1182-2022 (O&M)

Date of decision: - 29.10.2022

Jitendra Kumar Mansukhal Shah

...Petitioner

Versus

M/s India Infoline Finance and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Lipika, Advocate
for Mr. R.S. Mamli, Advocate
for the petitioner.

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

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Challenge in the present revision petition is to the judgment dated 25.09.2017, vide which, in the complaint filed under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (for short 'the NI Act') read with Section 200 Cr.P.C., the petitioner had been convicted under Section 138 of the NI Act and was directed to undergo simple imprisonment for a period of one year and was also directed to pay an amount of Rs.3,20,000/- as compensation under Section 357(3) Cr.P.C.. Challenge is also to the order dated 08.01.2020, vide which the Additional Sessions Judge, Gurugram has dismissed the appeal filed by the petitioner.

2. Brief facts of the case are that a complaint under Sections 138, 141 and 142 of the NI Act filed by the respondent No.1 against the petitioner and M/s Deep Cotton Company, which is stated to be a sole proprietorship, through the petitioner (its sole proprietor/authorized signatory), with respect to dishonour of a cheque dated 01.09.2015 of an amount of Rs.2,22,516/-.

3. The trial Court, after considering the entire evidence and documents, had convicted the petitioner under Section 138 of the NI Act and had also directed the petitioner, along with his proprietorship M/s Deep Cotton Company, to jointly pay a compensation of Rs.3,20,000/- to the complainant under Section 357(3) Cr.P.C. The appeal filed against the said order by the petitioner, as well as the sole proprietorship, was then dismissed by the Additional Sessions Judge, Gurugram.

4. On 18.07.2022, this Court was pleased to pass the following order: -

“Learned counsel for the petitioner has handed over an original demand draft amounting to Rs.5,00,000/- to learned counsel for the complainant today in the Court.

Learned counsel for respondent No.1/complainant has stated that he would hand over the said demand draft to the complainant.

Learned counsel the petitioner has submitted that the matter can be finally resolved in case the same is sent to the Mediation & Conciliation Centre of this Court.

Learned counsel for the complainant has also submitted that an effort can be made for final settlement.

In view of the above, let the matter be sent to the Mediation & Conciliation Centre of this Court.

The parties are directed to appear before the Mediation & Conciliation Centre of this Court on 28.07.2022.

For further consideration before this Court, adjourned to

27.09.2022.

Interim order to continue till the next date of hearing.

A photocopy of this order be placed on the files of other connected cases.

July 18, 2022

(VIKAS BAHL)
JUDGE”

5. In pursuance of the said order, the matter was sent to the Mediation and Conciliation Centre of this Court and the settlement/agreement dated 21.09.2022 was arrived at between the parties. The relevant portion of the said compromise/settlement is reproduced hereunder: -

“SETTLEMENT/AGREEMENT

This SETTLEMENT/AGREEMENT is entered into between Jitendra Kumar Mansukhai Shah, aged about 63 years son of Mansukhal Shah, Authorized Signatory of M/s Deep Cotton Company, having its office at 108 Surendranagar.

...First Party

AND

M/s India Infoline Finance having its registered office at 12A-10, 13th Floor, Parinee Crescenzo, C-38, Block-G, behind MCA Bandra Curia Complex, Bandra East, Mumbai-400051, its Corporate Office at Plot No.98, 4th Floor, Phase-IV, Udyog Vihar, Gurugram through its Authorized Representative.

...Second Party

on this 21 day September, 2022

WHEREAS

1. The first party/petitioner filed the four CRR Nos.1180, 1181,1182 and 1184 of 2022 before this Hon'ble High Court against the order dated 25.09.2017 and 08.01.2020 passed by Judicial Magistrate Ist Class, Gurugram and learned Additional Sessions Judge, Gurugram vide which the petitioner has been awarded/convicted for three months and to pay a sum of Rs.3,00,000/- (rupees three lacs only) in each case under Section 138 of the Negotiable Instruments Act, 1881. The appeal filed by the petitioner

was also dismissed. Consequently, the petitioner approached this Hon'ble High Court against the order of convictions passed in four different complaints vide CRR Nos.1180, 1181,1182 and 1184 of 2022 all titled as 'Jintendra Kumar Mansukhal Shah versus Mis India Infoline Finance and another' The Hon'ble High Court has granted suspension of sentence to the petitioner and ordered to be released on bail vide order dated 02.06.2022 in all the petitions.

2. The parties agreed that Mr. Surinder Pal Singh, Advocate would act as their Conciliator/Mediator in the matter of Mediation and Conciliation proceedings.

4. Several meetings were held during the process of Conciliation/Mediation and today i.e. 21.09.2022. Parties have reached at an amicable settlement in the presence of their respective Advocates.

5. That the petitioner have agreed to pay a sum of Rs.2,00,000/- (rupees two lacs only) on 27.09.2022 by way of demand draft in addition to the amount of Rs.5,00,000/- (rupees five lacs only) already paid to the respondent No.1 in term of the interim order passed by the Hon'ble High Court on 02.06.2022 and upon receiving the payment from the respondent, the respondent shall have no objection in case, the abvoe mentioned four criminal revision petitions are allowed by the Hon'ble Court.

7. That the parties undertake before the Hon'ble Court to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future. In case any of the parties fail to comply the terms of the settlement, the party which violates shall be liable for all the legal consequences.

8. With the execution of this agreement, each signatory acknowledges receipt of fully executed duplicate/original of this agreement.

9. That it is further agreed and clarified between the parties that the settlement executed between the parties in the above four criminal revision petitions, which is pending before this Hon'ble High Court is only limited to the above mentioned criminal revision petitions.

First Party

Jitendra Kumar Mansukhai Sharh (Aadhar No.2000 6400 0255)

Mr. R.S. Mamli, Advocate P/759/1992

for the petitioner.

Second Party

Mr. Vineet Sehgal, Advocate P/2571/2007

for the respondent M/s India Infoline Finance through authorized representative senior Manager Mr. Paramjit Singh (Aadhar No.2066 4974 2997).

21.09.2022

*(Surinder Pal Singh)
Mediator”*

6. A perusal of the agreement would show that the matter has been finally settled in all the aforesaid four cases, which have been filed by the respondent against the petitioner and the total amount at which the settlement has been made is Rs.7,00,000/-.
7. It is submitted by learned counsel for the petitioner as well as learned counsel for the complainant that the entire amount of Rs.7,00,000/- has been paid and received by the complainant and they have jointly prayed that the matter has been finally settled and thus, the present revision petition be allowed.
8. Learned counsel for the petitioner has submitted that for the recovery of the loan amount, due from the petitioner and the sole proprietorship, the house of the petitioner has already been sold and it is with great difficulty that the petitioner was able to raise fund in order to compromise the matter. It is also submitted that the total amount of compensation awarded in all the four cases amounts to Rs.12,40,000/- and yet the complainant has compromised the matter for an amount of Rs.7,00,000/-, which itself shows that the complainant is aware about the financial status of the petitioner and thus, has prayed that the petitioner be exempted for making the payment of 15% of the cheque amount.
9. 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.

10. 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.

11. 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.

12. This Court has heard the learned counsel for the parties.

13. 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.

14. 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)**.*

15. 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 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”.

16. In the present case, as has been highlighted by learned counsel for the petitioner, the petitioner in order to repay the loan amount, had sold his house and the financial position of the petitioner is apparent from the fact that although in all the four cases, which had been filed by the present respondents against the petitioner, the total compensation which had been awarded was of Rs.12,40,000/-, but finally, the compromise has been arrived at between the parties for an amount of Rs.7,00,000/-.

17. 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.

18. 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.

19. Keeping in view the above said facts and circumstances, the present criminal revision petition is allowed and the judgment dated 25.09.2017 as well as the order of sentence dated 25.09.2017 as also the judgment dated 08.01.2020 are set aside. The parties would be bound by the compromise.

20. All pending application(s), if any, stand disposed of in view of the aforesaid order passed.

October 29, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No