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

CRR-1116-2022 (O&M)  
Date of decision : 09.08.2022

Dharmender Singh

...Petitioner

Versus

Karambir Sharma and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Rajesh Bansal, Advocate for the petitioner.

Mr. Sarvesh Kumar Gupta, Advocate for respondent No.1.

Mr. Praveen Bhadu, AAG, Haryana.

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**VIKAS BAHL, J. (ORAL)**

Challenge in the present Criminal Revision is to the judgment dated 20.01.2017 and order on quantum of sentence dated 21.01.2017, vide which, the Judicial Magistrate Ist Class, Panipat had convicted the present petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and sentenced him to undergo rigorous imprisonment for a period of one year for the commission of offence and had even directed him to pay an amount of compensation of Rs.30,00,000/-.

Challenge has also been made to the judgment dated 18.11.2021 passed by the Additional Sessions Judge, Panipat, vide which,

the appeal filed by the present petitioner with respect to conviction and sentence was dismissed and only on the aspect of compensation, amount was reduced from Rs.30,00,000/- to Rs.28,00,000/-.

The brief background in the present case is that respondent No.1 had filed a complaint under Sections 138/142 of the Act of 1881 for dishonour of cheque amounting to Rs.14,40,000/- and the trial Court, after considering the entire material on record, convicted the petitioner under Section 138 of the Act of 1881 and sentenced him to undergo rigorous imprisonment as stated hereinabove.

Both the petitioner and respondent No.1 have filed appeals before the Additional Sessions Judge, Panipat and the appeal filed by respondent No.1 was dismissed whereas in the appeal filed by the present petitioner, conviction as well as sentence part was upheld but the compensation was reduced from Rs.30,00,000/- to Rs.28,00,000/-. Respondent No.1 has not filed any revision against the said order.

Learned counsel for the petitioner as well as respondent No.1 have submitted that during the pendency of the present Criminal Revision, compromise dated 01.08.2022 has been entered into, as per which, the petitioner has paid an amount of Rs.2,00,000/- to respondent No.1 as a full and final settlement and it has been agreed between both the parties that complainant-respondent No.1 has no objection in case the present Criminal Revision is allowed and the petitioner is acquitted. The terms of settlement are reproduced hereinbelow:-

***“MEMMORANDUM OF  
UNDERSTANDING/SETTLEMENT AGREEMENT***

*This MEMMORANDUM OF UNDERSTANDING/ SETTLEMENT AGREEMENT is executed at Panipat, Haryana on this Ist day of August, 2022 between:-*

*Karambir Sharma S/o Sh. Ram Kishan Sharma R/o H.No. 489, Sector-6, HUDA, Panipat, now at Falt No. 301, Rose Garden, Building No.2, D-Mart, Sec. 10-E, Mumbai, Aadhar No. 5550 2598 3928, Mob.No. 9987304445.*

***...Ist Party/ Complainant***

*Dharmender Singh S/o Late Sh. Gurdev Singh R/o Arjun Nagar, near Gurudwara, Kabri Road, Panipat, through his mother Nirmal Kaur, Aadhar No. 5569 9740 6617, Mob.No. 8278302469, on behalf of the accused party.*

***...IInd party/Accused***

- 1. That the IInd party/accused issued one cheque bearing no. 616152 dated 12.11.2014 amounting Rs. 14,40,000/- for discharging his legal liability in favour of Ist party/ complainant.*
- 2. That the above said cheque dishonour on its presentation in the bank. The Ist party/complainant filed the complaint u/s 138 of N.I.Act and same is allowed by the Hon'ble court, Panipat and after that the IInd party filed the appeal before the Ld. Session Court, Panipat and the same is dismissed by the Ld. Session Court, Panipat and the Ld. Court took the judicial custody of IInd party/accused.*
- 3. That the IInd party/accused filed the criminal revision before the Hon'ble Punjab and Haryana High Court, Chandigarh vide CRR No. 1116 of 2022 and same is fixed for 09.08.2022.*
- 4. That now both the parties amicably settle the dispute before the respectable persons of the society and Ist party/complainant received the full and final settlement amount Rs. 2,00,000/- (Rs. two lacs) and nothing is due and outstanding towards IInd party/accused.*

*5. That Ist party/complainant also undertakes to appear before the Hon'ble court and give the statement regarding the compromise between the parties if required and also ready to signature the papers if any required for allow the criminal revision filed by the IInd party/accused on the basis of compromise/settlement and no objection for relese on bail suspension a sentence of imprisonment or order of fine/compensation or acquittal the accused or quashing the complaint.*

*6. That the Ist party/ complainant also given no objection for the revision filed by the IInd party/accused allowed by this Hon'ble Court and proceeding pending before this Hon'ble Court may kindly be quashed against the IInd party/accused in this case. That the Ist party/complainant received entire amount from the mother of the IInd party/accused and the matter has been settled by both the parties.*

*7. That the settlement agreement has been voluntarily arrived between the parties with their own free will and without any force, pressure or coercion.*

*In witness whereof the parties has hereto have set their respective hand on these present on the 1st day of August 2022 in the presence of following witnesses.*

*Witnesses: Ist Party/Complainant IInd Party/ accused”*

The said settlement is supported by an affidavit of Karambir Sharma-complainant-respondent No.1 and the said settlement and affidavit have been placed on record by way of moving an application bearing No.CRM-27860-2022.

Learned counsel for the petitioner as well as respondent No.1 have submitted that the financial position of the petitioner is very weak and the said fact is apparent from the fact that although, amount of the cheque in

question was Rs.14,40,000/- and was issued in the year 2014 but complainant-respondent No.1 has, after seeing the financial position of the petitioner, compromised the matter for an amount of Rs.2,00,000/- only. It is submitted that the petitioner is not in a position to pay the cheque amount and the petitioner is also in custody since 18.05.2022 and has no source of livelihood.

Reliance in this regard has been made to paragraph 17 of the judgment 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 State counsel has stated that since the present case is under Section 138 of the Act of 1881 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 Act of 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 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** (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.*

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*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, learned counsel for the petitioner and respondent No.1 have jointly submitted that the petitioner is a very poor person and have highlighted the fact that although, the amount of the cheque was Rs.14,40,000/- and was issued in the year 2014, yet, complainant-respondent No.1 has compromised the matter by receiving only an amount of Rs.2,00,000/- in the year 2022 as complainant-respondent No.1 is aware of the weak financial position of the petitioner. It is further submitted that the petitioner is in custody since 18.05.2022 and has no source of livelihood.

Keeping in view the poor financial condition of the petitioner and special facts and circumstances of the present case, this Court deems it appropriate that cost 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, thus, keeping in view the above said facts and circumstances, the present Criminal Revision is allowed and the judgment of conviction dated 20.01.2017 and order on quantum of sentence dated 21.01.2017 passed by the Judicial Magistrate Ist Class, Panipat as well as the judgment

dated 18.11.2021 passed by the Additional Sessions Judge, Panipat are set aside and the petitioner be released, in case, he is not required in any other case.

Since, the main case has been decided, application bearing CRM-19649-2022 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.

**09.08.2022**

*Pawan*

**(VIKAS BAHL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**