

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(116 + 287)

CRM-M-29748-2022 (O&M)
Date of decision: - 02.08.2022

M/s Vishal Jewellers Pvt. Ltd. and others

....Petitioners

Versus

Sukhdev Singh Aulakh

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Karan Singla, Advocate
for the petitioners.

Mr. Ranwinder Singh, Advocate
for the respondent.

VIKAS BAHL, J. (ORAL)

CRM-27246-2022

This is an application filed under Section 482 Cr.P.C. for placing on record joint affidavit containing the terms of the settlement arrived between the parties.

Application is allowed, as prayed for. The copy of joint affidavit containing the terms of the settlement arrived between the parties is taken on record, subject to all just exceptions.

CRM-M-29748-2022

Present petition has been filed under Section 482 Cr.P.C. for quashing of the complaint NACT No.984 of 2020, registered on 09.10.2020 under Section 138 read with Section 141 of the Negotiable

Instruments Act, 1881 pending before the Judicial Magistrate First Class, Mohali (Annexure P-1) as well as summoning order dated 09.11.2020 (Annexure P-2) and order dated 02.05.2022 (Annexure P-4), vide which an application of the petitioner for discharge has been dismissed.

Learned counsel for the petitioner has submitted that in the present case, the respondent had filed a complaint under Section 138 read with Section 141 of the Negotiable Instruments Act with respect to dishonor of two cheques amounting to Rs.49,545/- each (total Rs.99,090/-) and in the said case, the petitioner had moved an application for discharge before the trial Court with the readiness to deposit the cheques amount through demand drafts and has submitted that at that stage, the application was opposed by the complainant. It is further submitted that the said application in any case was not maintainable, inasmuch as, the petitioner could not be discharged after the summoning order had already been passed. Learned counsel for the petitioner has contended that when the case came up for hearing on 15.07.2022, this Court was pleased to pass the following order: -

“Learned counsel for the petitioners has submitted that the petitioners are ready to compensate the respondent and are ready to offer an amount of Rs.2 lacs as compensation. It is further submitted that the petitioners are also ready to pay litigation expenses amounting to Rs.30,000/- to the complainant-respondent in order to pursue the present litigation.

Notice of motion for 19.07.2022.

To be taken up at 03:30 pm.

Liberty is granted to the petitioners to serve the sole respondent-complainant through dasti process as well. The petitioners are directed to prepare two demand drafts, one of an amount of Rs.2 lacs and another of an amount of Rs.30,000/- in the name of

complainant-respondent, and the same be produced on the next date of hearing before this Court.”

It is further submitted that in pursuance of the said order, the matter has been compromised and the joint affidavit to that effect has also been prepared and as per the said joint compromise, the amount of Rs.30,000/- has been paid as litigation expenses and out of the total amount of Rs.2,00,000/-, Rs.1,00,000/- has been received by the complainant in partial discharge of the rent and Rs.1,00,000/- has been paid as compensation to the complainant and as per the said affidavit, the complainant has stated that he has no objection in case the proceedings initiated under Section 138 of the NI Act are quashed. Learned counsel for the petitioner has further contended that in the present case, an application has been moved by the petitioner before the trial Court before passing of any order of conviction and has submitted that the petitioner would not be able to pay 10% of the cheque amount as the petitioner is in deep financial difficulty and it is with great difficulty that the petitioner has been able to even pay the present amount of Rs.2,50,000/- as per the settlement arrived at between the parties. Reliance in this regard has been made to the 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 counsel for the complainant-respondent No.2 has

also stated that respondent No.2 has no objection in case the said amount of 10% is waived off in view of the special circumstances in the present case. It is further submitted that respondent No.2 has no objection in case the present proceedings are quashed. It is also submitted that the compromise/affidavit has been entered into between the parties without any pressure and undue influence.

Learned State counsel has stated that since the present case is under Section 138 of the Negotiable Instruments Act, 1881 and the matter has been compromised, he would have no objection in case the present petition is allowed, in accordance with law.

This Court has heard the learned counsel for the parties.

The Hon'ble Supreme Court of India in case of **Rajendra's case (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.

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 present case, the matter has been compromised and the relevant portion of the joint affidavit is reproduced herein below: -

"Joint Affidavit of: -

1. *M/S Vishal Jewellers Private Limited, through its Managing Director Ranjit Kapoor son of Shri Mahendra Pal Kapoor.*
2. *Ranjit Kapoor son of Shri Mahendra Pal Kapoor, Managing Director, M/S Vishal Jewellers Private Limited, Phone No. 9872430786, Adhaar card No.3517 1047 2725.*
3. *Vishal Kapoor son of Shri Ranjit Kapoor, Director, M/S Vishal Jewellers Private Limited, Phone No. 8591100009, Adhaar card No. 5420 9228 3381.*
4. *Hemant Kapoor son of Shri Ranjit Kapoor, managing director, M/S Vishal Jewellers Private Limited, Phone No. 8591200009, Adhaar card No. 2602 7335 2652.*
5. *Sunita Kapoor wife of Shri Ranjit Kapoor, Director, M/S Vishal Jewellers Private Limited, Phone No. 9872420786, Adhaar card No. 8566 9947 9125.*

(Hereinafter referred as Party No.1)

And

Sukhdev Singh Aulakh son of Shri Ajaib Singh Aulakh, r/o H.No. 271, sector 69, SAS Nagar (Mohali), Tehsil and District, SAS Nagar through his attorney Shivdayal son of Shri Shiya Ram, resident of house number 564, Lohgarh Road, Zirakpur, Teh. Dera Bassi, district SAS Nagar (Mohali).

(Hereinafter referred as Party No.2)

We the above named deponents do hereby solemnly affirm and declare as under: -

1. *That the party no. 2 is co-owner of shop number UGF-5, Omaxe Mall, Opposite Kali Mata Mandir, Patiala alongwith his wife Ms. Bharpur Kaur Aulakh.*
2. *That the party no. 2 has given the above stated premises on lease to the Party No. 1 and the last lease deed was executed between the parties on 18.02.2020.*
3. *That the party number I was not able to pay the rent to the*

- party number 2 as alleged by party number 2 in his complaint.*
4. *That the party number 1 in partial discharge of their liability towards the payment of rent issued two cheques bearing No. 138140 dated 28.01.2020 and No. 138141 dated 28.02.2020 both drawn on ICICI Bank, 28-29, Prem Heights, Ajit Nagar, Patiala (A/C No. 016205004123) each cheque for Rs.49,545/- favour of party no. 2.*
 5. *That however, the above stated cheques so issued by the party number 1 to the party number 2 on presentation were dishonored by the bank for the reasons stated as "Insufficient Funds".*
 6. *That in the eventuality of the dishonor of the cheques, party number 2 initiated proceedings under Section 138 of the Negotiable Instruments Act against the party no. 1 same was registered as NACT No. 984 of 2020 dated 09.10.2020 before the court of Judicial Magistrate, Mohali.*
 7. *That in order to get the above stated complaint quashed the party No 1 has approached before this Honourable Court by way of filing CRM-M-No. 29748 of 2022.*
 8. *That during the pendency of the above stated proceedings Party No. 1 has submitted for payment of Rs.2,00,000/- by way of compensation and Rs.30,000/- by way of litigation to be paid in the form of demand draft to the party number 2.*
 9. *That in view of the submission made before this Hon'ble Court, Party No. 1 on 19.07.2022 presented a Demand Draft No. 502396 for a sum of Rs.2,00,000/-in the name of the party no. 2, however the sum of Rs.30,000/-has been paid in cash for the reason that the demand draft prepared got torn.*
 10. *That the party number 2 specifically depose here that the sum of Rs.1,00,000/- has been received in partial discharge of the rent and the balance amount of Rs. 1,00,000/- approximately has been accepted by way of compensation due to the dishonor of the cheques issued by the party number 1.*
 11. *That the party number 2 in view of the compensation received has further agreed not to proceed further with the complaint NACT No. 984 of 2020 and hereby given this undertaking and no objection if the above stated proceedings initiated by him*

are quashed and the present quashing petition CRM-M No. 29748 of 2020 is allowed as prayed for.

PLACE: CHANDIGARH

SD/-

DATED:- 29/07/2022

DEPONENT NO. 1

(FOR M/S VISHAL JEWELLERS)

SD/-

*DEPONENT NO.2.
(RANJIT KAPOOR)*

SD/-

*DEPONENT NO. 3
VISHAL KAPOOR*

SD/-

*DEPONENT NO.4
HEMANT KAPOOR*

SD/-

*DEPONENT NO.5
SUNITA KAPOOR*

SD/-

*DEPONENT PARTY NO.2
SUKHDEV SINGH AULAKH THROUGH SHIVDAYAL"*

A perusal of the said joint affidavit would show that as per the said compromise, Rs.1,00,000/- has been received by the complainant in partial discharge of the rent and the said Rs.1,00,000/- has been received as compensation by the complainant and the amount of Rs.30,000/- has been paid to the complainant as litigation expenses. The complainant has already stated that he has no objection in case the present proceedings are quashed. In the present case, the petitioner had moved an application for discharge before the trial Court, to the effect that he was ready to pay the cheque amount and thus, the said amount was offered prior to the final adjudication by the trial Court.

In view of the fact that the present case is a case where the petitioner is in deep financial difficulty 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/quash the complaint and summoning order passed against the petitioner on the basis

of a valid compromise. The compromise in the present case is genuine and valid. Thus, the present petition is allowed and the complaint NACT No.984 of 2020, registered on 09.10.2020 under Section 138 read with Section of the Negotiable Instruments Act, 1881 pending before the Judicial Magistrate First Class, Mohali (Annexure P-1) as well as summoning orders dated 09.11.2020 (Annexure P-2) and order dated 02.05.2022 (Annexure P-4) are set aside

Pending miscellaneous application(s), if any, shall also stand disposed of, in view of the abovesaid order.

August 02, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No