

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

**CRR-2403-2018 (O&M)
Date of decision: 04.07.2022**

Bharti Devi

...Petitioner

Versus

Anant Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Suresh K. Kaushik, Advocate for the petitioner.

Respondent No. 1-Anant Ram in person with
Mr. Manoj Kumar Kush, Advocate.

Mr. Surender Singh, AAG Haryana.

HARNARESH SINGH GILL, J. (ORAL)

CRM-16693-2022

Prayer in the present application is for recalling the order dated 25.11.2019 whereby the criminal revision petition preferred by the petitioner was dismissed for non-prosecution.

Vide order dated 10.05.2022 passed by this Court, notice in the application was issued for today. The said order reads as under:-

“This is the 2nd application for recalling the order dated 25.11.2019 vide which the revision petition was dismissed for non-prosecution, 1st one having been dismissed as withdrawn on 17.02.2020.

Learned counsel for the applicant-petitioner submits that vide judgment of conviction and order of sentence dated 16/20.01.2017, the applicant-petitioner was convicted under Section 138 of the Negotiable Instruments Act and sentenced to

undergo simple imprisonment for a period of one year and to pay compensation to the tune of Rs.5,00,000/-.

It has been pointed out that during the pendency of the present lis, the parties were directed to appear before the Mediation and Conciliation Centre of this Court, where the applicant-petitioner had agreed to pay a sum of Rs.5,25,000/-.

Learned counsel for the applicant-petitioner further submits that the applicant-petitioner has already paid a sum of Rs.4,45,000/- upto 15.07.2019 and that she is further ready to pay the amount of Rs.90,000/- by way of demand draft bearing No.043069 dated 26.04.2022.

Notice of the application for 04.07.2022.

'Dasti' as well. ”.

Learned counsel appearing for respondent No. 1 submits that he has no objection, if the order dated 25.11.2019 passed by this Court, is recalled.

In view of the above, the application is allowed and the order dated 25.11.2019 passed by this Court is recalled and the revision petition is restored to its original number and the case is taken up on Board today itself.

Main case:

Challenge in the petition is to the judgment dated 04.07.2018 passed by the learned Additional Sessions Judge, Hisar, dismissing the appeal preferred by the petitioner and the judgment/order dated 16.01.2017/20.01.2017 passed by the learned Judicial Magistrate 1st Class, Hisar, whereby the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple

imprisonment for a period of one year and to pay compensation to the tune of cheque amount Rs. 5,00,000/- to the respondent-complainant.

Learned counsel for the petitioner submits that during the pendency of the present petition, the parties were directed to appear before the Mediation and Conciliation Centre of this Court, where the petitioner had agreed to pay a sum of Rs. 5,25,000/-. Out of the said amount, an amount of Rs.4,45,000/- was paid to the respondent No. 1-complainant upto 15.07.2019. He has also handed over a Demand Draft bearing No. 043069 dated 26.04.2022 amounting Rs. 90,000/- to the learned counsel for respondent No. 1 in the Court. He has also placed on record an affidavit executed by respondent No. 1-Anant Ram, deposing therein that he has received the remaining amount and has no objection, if the present petition is allowed.

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 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.

Learned counsel for respondent No.1-complainant does not have any objection to the aforesaid prayer made by the counsel for the petitioner.

I have heard the learned counsel for the parties and have also gone through the paper-book.

The matter has been settled between the parties and the due amount has already been paid by the petitioner to respondent No. 1.

The Hon'ble Supreme Court in Madhya Pradesh State Legal Services Authority Vs. Prateek Jain & Anr., (2014)10 SCC 690, held that it would be for the parties, particularly the accused person, to make out a plausible case for the waiver/reduction of the costs and to convince the concerned Court about the same. It was held as under:-

"....Having regard thereto, we are of the opinion that even when a case is decided in Lok Adalat, the requirement of following the guidelines contained in Damodar S. Prabhu (supra) should normally not be dispensed with. However, if there is a special/specific reason to deviate therefrom, the Court is not remediless as Damodar S. Prabhu (supra) itself has given discretion to the concerned Court to reduce the costs with regard to specific facts and circumstances of the case, while recording reasons in writing about such variance. Therefore, in those matters where the case has to be decided/settled in the Lok Adalat, if the Court finds that it is a result of positive attitude of the parties, in such appropriate cases, the Court can always reduce the costs by imposing minimal costs or even waive the same. For that, it would be for the parties, particularly the accused person, to make out a plausible case for the waiver/reduction of costs and to convince the concerned Court about the same. This course of action, according to us, would strike a balance between the two competing but equally important interests, namely, achieving the objectives delineated in Damodar S. Prabhu (supra) on the one hand and the public interest which is sought to be achieved by encouraging settlements/resolution of case through Lok Adalats."

In Rajendra Vs. Nand Lal, 2020(1) RCR (Crl.) 166, the Hon'ble Apex Court, has held as under:-

"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)."

In view of the above, in the present case, the complainant does not have any objection to accept the settled amount and further he is ready to forego the costs to be imposed in terms of the judgment of the Hon'ble Apex Court in Damodar S. Prabhu's case (supra).

After hearing the learned counsel for the parties and taking into consideration the fact that the parties have settled their dispute(s) and the entire compensation amount stands paid to respondent No.1-complainant, 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 complaint under Section 138 N.I.Act is dismissed and the petitioner is acquitted of the notice(s) of accusation served upon him.

Disposed of in the aforementioned terms.

04.07.2022
Mangal Singh

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No