

227

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

CRR-978-2021 (O&M)

Date of decision : 01.02.2022

Mohd. Suhel

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Baljeet Beniwal, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. S.P. Arora, Advocate for respondent No.2/complainant.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

CRM-2342-2022

This is an application filed under Section 482 of Cr.P.C. for preponement of the date of hearing in the main case from 01.02.2022 to some early date.

Application is disposed of as having been rendered infructuous.

CRM-29264-2021

This is an application filed under Section 5 of the Limitation

Act, for condonation of delay of 258 days in filing the present criminal revision.

For the reasons stated in the application, delay of 258 days in filing the present criminal revision is condoned.

Application is allowed.

Main case

Challenge in the present Criminal Revision is to the judgment and order on quantum of sentence dated 12.04.2018 passed by the Judicial Magistrate Ist Class, Faridabad, vide which, the petitioner had been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and had been sentenced to undergo simple imprisonment for a period of three months for the offence punishable under Section 138 of the Act of 1881 and had been directed to pay the compensation to the tune of Rs.2,65,000/- to the complainant under Section 143(1) (proviso) of the Act of 1881 read with Section 357(1)(3) of Cr.P.C. within a period of one month from the date of passing of the said judgment.

Challenge has also been made to the judgment dated 03.05.2019, vide which, the appeal preferred by the petitioner against the abovesaid judgment and order on quantum of sentence dated 12.04.2018 had been dismissed.

The brief facts of the case are that respondent No.2-Anil Dua had filed a complaint under Section 138 of the Act of 1881 for the dishonour of two cheques dated 04.02.2016 for a sum of Rs.1,20,000/-

and dated 01.02.2016 for a sum of Rs.1,45,000/-, both drawn on State Bank of India, Sector-12, Faridabad.

The Judicial Magistrate Ist Class, Faridabad, after considering the entire evidence on record, was pleased to convict the present petitioner under Section 138 of the Act of 1881 and sentenced him to undergo simple imprisonment as has been detailed hereinabove.

The petitioner had filed an appeal before the Additional Sessions Judge, Faridabad and since, the petitioner did not present himself in the said proceedings, accordingly, the appeal was dismissed and the judgment passed by the Lower Court was upheld.

Against the abovesaid judgment, the present Criminal Revision has been filed. Alongwith the present Criminal Revision, an application bearing CRM-29266-2021 under Section 320 of Cr.P.C. for compounding of the offence, has also been filed.

On 10.09.2021, when this matter came up for hearing, the following order was passed:-

*“Learned counsel for the petitioner inter alia submits that the petitioner is ready to pay the entire cheque amount of Rs.2,65,000/- as well as 20% of the amount of the compensation to the complainant, as per the judgment of Hon'ble the Supreme Court in **Surinder Singh Deswal @ Col. S.S. Deswal and others Vs. Virender Gandhi and another, Criminal Appeal Nos.1936-1963 of 2019, decided on 08.01.2020.***

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of

respondent No.1-State and seeks time to get instructions.

Adjourned to 27.10.2021.

Liberty is granted to the petitioner to serve respondent No.2 through dasti process also.”

On 16.11.2021, the following order was passed:-

“Mr. Himanshu Arora, Advocate has appeared and filed his memorandum of appearance on behalf of respondent No.2. Same is taken on record.

A draft of Rs.2,65,000/- has been handed over to the learned counsel for the complainant by the learned counsel for the petitioner.

Learned counsel for the complainant has submitted that he will hand over the said draft to the complainant and also get final instructions in the matter.

Adjourned to 23.11.2021.

A photocopy of this order be placed in the file of other connected case.”

Learned counsel for the petitioner has submitted that full and final settlement has been arrived at between the parties. It is submitted that the petitioner, in addition to the amount of Rs.2,65,000/-, which has been given to the complainant, is ready to pay further amount of Rs.30,000/- to the complainant as a full and final settlement of the entire matter and undertakes to pay the said amount of Rs.30,000/- within a period of one month from the date of the present order.

Learned counsel for the petitioner has further submitted that the petitioner is also ready to pay 15% of the cheque amount i.e. Rs.39,750/- as per law laid by the Hon'ble Supreme Court of India in

Damodar S. Prabhu Vs. Sayed Baba Lal reported as **AIR 2010 (SC)**

1907, within a period of one month from today.

Learned counsel for respondent No.2/complainant has fairly submitted that he has already received a sum of Rs.2,65,000/- from the petitioner and is also ready to fully and finally settle the matter on further receipt of Rs.30,000/- from the petitioner. It is argued by the learned counsel for the petitioner as well as by respondent No.2/complainant that the compromise in the present case is genuine and bona fide and is without any undue pressure and is in the best interest of both the parties and respondent No.2/complainant has no objection in case, the present Criminal Revision is allowed and judgment of conviction and order on quantum of sentence passed against the petitioner is set aside in case the petitioner abides by his undertaking to pay an amount of Rs.30,000/- to the complainant within a period of one month from today.

This Court has heard the learned counsel for the parties and has perused the paper book.

The petitioner was convicted vide judgment dated 12.04.2018 under Section 138 of the Act of 1881 and was sentenced to undergo simple imprisonment for a period of three months and was also directed to pay the compensation to the tune of Rs.2,65,000/- to the complainant. An appeal preferred against the same was dismissed and the order was upheld. The petitioner had not even appeared in the said proceedings. In the present Criminal Revision, an application has been moved for compounding of offence under Section 320 read with Section 482 of Cr.P.C. The orders passed by this Court on 10.09.2021 as well as on

16.11.2021, which have been reproduced hereinabove, would also show that an amount of Rs.2,65,000/- has already been paid by the petitioner to the complainant. The matter has been fully and finally settled in the following terms:-

- (i) In addition to the amount of Rs.2,65,000/- which has been paid by the petitioner to the complainant, an amount of Rs.30,000/- would be paid by the petitioner to the complainant within a period of one month from today.
- (ii) An amount of Rs.39,750/-, being 15% of the cheques amount of Rs.2,65,000/-, would be paid by the petitioner to the High Court Lawyers' Welfare Fund within a period of one month from today as per law laid down in **Damodar s. Prabhu's case** (Supra).
- (iii) The compromise is genuine and bona fide and is in the best interest of both the parties.

Thus, keeping in view the abovesaid facts and circumstances, judgment of conviction and order of sentence dated 12.04.2018 passed by the Judicial Magistrate Ist Class, Faridabad as well as judgment dated 03.05.2019 passed by the Additional Sessions Judge, Faridabad are set aside and the present Criminal Revision is allowed in terms of the compromise and the same would be subject to the petitioner giving a draft amounting to Rs.30,000/- in the name of the complainant within a period of one month from today and also on depositing an amount of Rs.39,750/- being 15 % of the cheques amount, within a period of one month from today with the High Court Lawyers' Welfare Fund.

It is made clear that in case, the petitioner does not furnish draft of Rs.30,000/- in the name of the complainant or does not deposit the above amount of Rs.39,750/- with the High Court Lawyers' Welfare Fund within a period of one month from today, then the present Criminal Revision would be deemed to have been dismissed.

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

01.02.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No