

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR-1641-2022 (O&M)

Reserved on: 19.09.2022

Date of Pronouncement: 30.09.2022

Sunny

...Petitioner (s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Rishu Mahajan, Advocate
for the petitioner(s).

Mr. Jashandeep Singh, AAG, Punjab.

ANOOP CHITKARA, J.

Criminal Complaint	No. NACT/5467/2017 under Section 138 of the Negotiable Instruments Act, District Jalandhar
Criminal Appeal	No. 46/2020, Additional Sessions Judge, District Jalandhar.

1. The petitioner, who stands convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (NIA) has come up before this Court under Section 401, Code of Criminal Procedure, (CrPC) for setting aside of judgment of conviction and sentence order with an application for permission to compound the offence.

2. With the permission of this Court, parties appeared before the trial Court. On 6.9.22, the aggrieved person M/s Tauranga Traders through its proprietor Nishant Thakur (R-2) stated before the JMJC, Jalandhar that there would be no objection if the court set aside the judgment of conviction with order of sentence and consequent proceedings. As per the concerned court's report dated 13.9.22,

the parties consented to the quashing of complaint and consequent proceedings without any threat.

3. The petitioner faced criminal prosecution by the private respondent because of the dishonor of the cheque in question. Thus, the opposition of the State's counsel to this compromise is formal.

4. The jurisprudence behind the Negotiable Instruments Act, 1881 is that the business transactions are to be honoured. The legislative intention is not to make people suffer incarceration only because their cheques bounced. These proceedings are to recover the cheque amount by showing teeth of a penal clause.

5. Given the judgment passed by Hon'ble Supreme Court of India in Damodar S. Prabhu v Sayed Babalal, (2010) 5 SCC 663, the law is well settled that when the entire money is paid, then the complainant cannot have any objection to such compromise, and 15% of the cheque amount is to be paid by the accused to the concerned State Legal Services Authority.

6. Given above, because of the compromise, this is a fit case where the revisional as well as inherent jurisdiction of the High Court under Section 482 of the CrPC supported by Section 147 of the NIA is invoked to disrupt the prosecution and quash the proceedings mentioned above. The complaint, notice of accusation, and the proceedings captioned above are quashed and set aside. The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

7. Ld. counsel submits that in case the 15% compensation amount could not be deposited, then in such a situation, the time to do so may be extended and also prayed that in case it is beyond the financial capacity of the petitioner to pay the 15% amount. It may be dispensed with or reduced after considering the petition's paying capacity, family, and financial liabilities.

8. The amount of cheque in question was Rs. 1,15,000/-, 15% of which comes out to be Rs. 17,250/-. This compounding is subject to the petitioner depositing

the amount of Rs. 17,250/-, on or before 31st Dec, 2022, with the concerned wing of High Court Legal Aid, failing which this entire order, including compounding, shall automatically stand recalled under Section 362 and Section 482 CrPC, and this petition shall be posted for hearing on merits.

9. In case, after taking into account the family and financial liabilities, it is beyond the petition's financial capacity to pay the 15% amount, then in such a situation, it shall be open for the petitioner to apply to section 482 CrPC by placing on record the bank statements from 01 April 2020 till the date of all bank accounts, all fixed deposits, DEMAT account numbers, the current market value of jewelry, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand. After analyzing the petition's paying capacity, the court shall consider reducing or dispensing with 15% of the amount mentioned earlier.

10. In extraordinary circumstances, the petitioner may approach this Court for an extension of time to deposit the compounding fee. Petitioner to file the proof of deposit before the trial Court within the aforementioned time. Consequently, the above-captioned complaint, notice of accusation, and all consequent proceedings would also stand quashed qua the petitioners, and the petitioners would also stand acquitted of all the offenses captioned above. All pending applications are closed. On failure to comply with the conditions mentioned above, the petition shall be listed for a final hearing, and the quashing order shall automatically stand recalled without any further reference to this Court.

Petition allowed in the terms mentioned above. All pending applications, if any, stand closed.

(ANOOP CHITKARA)
JUDGE

September 30, 2022
AK

Whether speaking/reasoned:
Whether reportable:

Yes
No.