

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1684-2019 (O&M)
Reserved on: 08.02.2022
Pronounced on: 14.02.2022

Munshi Ram

...Petitioner

Versus

State of Punjab & another

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Manmeet Singh Bindra, Legal Aid Counsel
for the petitioner.

Mr. Harsimar Singh Sitta, AAG, Punjab.

Mr. Namit Gautam, Advocate
for respondent no.2.

ANOOP CHITKARA J.

Criminal Complaint	No. 213/4 of 05.09.2013 under Section 138 of the Negotiable Instruments Act, decided by Sub-Divisional Judicial Magistrate, Khanna on 02.11.2016
Criminal Appeal	No. 623 of 25.11.2016, decided by Additional Sessions Judge, Ludhiana on 02.07.2019.

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), seeking setting aside of judgment of conviction dated 02.11.2016 passed by Sub-Divisional Judicial Magistrate, Khanna and judgment in appeal dated 02.07.2019 passed by Additional Sessions judge, Ludhiana as well as quashing of proceedings arising out of complaint captioned above, as the parties have compromised the matter.

2. Learned counsel for the petitioner-convict has also made an oral request to invoke the inherent powers of this Court under Section 482 CrPC in order to set aside the impugned judgments in view of the compromise entered between the parties.

3. The petitioner faced criminal prosecution by the private respondent, because of the dishonour of the cheque in question.

4. Learned Legal Aid Counsel appearing for the petitioner as well as learned counsel for the complainant-respondent no.2 have submitted that the matter was compromised even at the appellate stage but due to absence of complete payment as per the terms of the compromise, it could not be finalised. However, now since the entire settlement amount stands paid, the petitioner be exempted from payment of 15% of the compensation amount.

5. 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.

6. 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.

7. Given above, because of the compromise, this is a fit case where the 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.

8. Although the cheque was drawn for a sum of Rs. 3,30,000/-, but the parties agreed for mutual compromise for a sum of rupees three lacs and fifty thousand (Rs.3, 50,000). As per the order dated 19-07-2019, passed by a co-ordinate bench of this Court, the convict has already paid an amount of Rs.1,80,000/- to the complainant and had a demand draft for the remaining Rs.1,70,000/- which is currently lying with the Registry.

9. When the matter was listed before this Court on 25.11.2021, none appeared for the petitioner-convict and learned coordinate Bench adjourned the matter in the interest of justice. Further, when the matter was again listed before this Court on 20.01.2022, again nobody put in appearance for the petitioner and therefore, this Court appointed a Legal Aid

Counsel to assist the Court. It appears that the petitioner-convict has lost hope in the justice delivery system. After paying the entire compensation money, the petitioner-convict might have presumed that criminal proceedings against him shall stand closed automatically.

10. Thus, in the entirety of facts and circumstances peculiar to this case, this court deems it appropriate to exempt the 15% fee of the cheque amount payable to the State Legal Aid Authority as per judgment of the Apex Court in the case of Damodar S. Prabhu v Sayed Babalal, (2010) 5 SCC 663.

11. In Damodar S. Prabhu v Sayed Babalal, (2010) 5 SCC 663, Hon’ble Supreme Court holds,

[17]. “...Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance.”

12. Consequently, the above-captioned complaint, notice of accusation, and all consequent proceedings i.e. judgment of conviction dated 02.11.2016 passed by Sub-Divisional Judicial Magistrate, Khanna and judgment in appeal dated 02.07.2019 passed by Additional Sessions judge, Ludhiana would also stand quashed/set aside *qua* the petitioner and the petitioner would also stand acquitted of all the offences captioned above.

13. Registrar (Judicial) is directed to hand over the demand draft of Rs.1,70,000/-, lying deposited with him, to respondent no.2 after proper revalidation and ratification.

Petition allowed in the terms mentioned above. All pending applications, if any, shall stand disposed of.

(ANOOP CHITKARA)
JUDGE

February 14, 2022
AK

Whether speaking/reasoned: Yes
Whether reportable: No.