

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-43587-2022 IN/& CRR-1195-2021

Date of decision : 16.11.2022

Paramvir Singh

... Petitioner

Versus

Chhinder Pal and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Surinder Garg, Advocate
for the petitioner.

Mr.K.S.Brar, Advocate
for respondent no.1.

Mr.Iqbal S.Mann, DAG, Punjab.

VIKAS BAHL, J.(ORAL)

Challenge in the present revision petition is to the judgment dated 05.07.2018 and the order of sentence dated 05.07.2018 passed by the Judicial Magistrate Ist Class, Faridkot vide which the petitioner has been convicted of the offence under Section 138 of the Negotiable Instruments Act 1881 (in short "N.I. Act") and has been sentenced to undergo rigorous imprisonment for a period of 2 years and has been imposed to deposit a fine of Rs.5000/- and in default of which, he has further been directed to further undergo simple imprisonment for a period of 30 days. Challenge is also to the judgment dated 16.09.2021 passed by the Additional Sessions Judge, Faridkot, vide which the the appeal filed by the present petitioner was dismissed and the sentence awarded to the present petitioner was upheld.

Section 138 of the N.I. Act with respect to the dishonour of cheque dated 28.05.2015 for an amount of Rs.4 lacs drawn at the State Bank of Patiala, Jaitu.

The learned trial Court after considering the entire material on record had held the petitioner guilty of the offence under Section 138 of the N.I. Act and sentenced the petitioner as stated hereinabove.

The Additional Sessions Judge, Faridkot, after reconsidering the entire matter, dismissed the said appeal and upheld the sentence.

During the pendency of the present appeal, learned counsel for the petitioner has filed an application i.e., CRM-43587-2022 under Section 482 Cr.P.C. for allowing the parties to compound the offence in view of the settlement which has been arrived at between the parties. Along with the said application, the compromise has also been annexed. The relevant part of the said compromise dated 28.01.2022 is reproduced hereinunder:-

“That there were Money Transactions between the First Party and Second Party, during this there remained Rs. 4 Lacs to be paid by the First Party to the Second Party. On repeated demands from First Party, the First Party gave a cheque of Rs.4 Lac of his Bank to the Second Party, which was bounced when the same was presented for encashment in the Bank. In this regard the Second Party filed a complaint under Section 138 of N.I. Act in the Hon'ble Court at Faridkot, in which the First Party was convicted by the Hon'ble Court. The First Party filed appeal in the Court of Hon'ble Sessions Judge, Faridkot, which was dismissed by the Hon'ble Court. Thereafter the First Party has filed appeal in the Hon'ble Punjab and Haryana High Court, Chandigarh in which the Hon'ble Punjab and Haryana High Court, Chandigarh has the First Party to pay the cheque amount to the Second Party and the case has been fixed for 28.1.2022.

That now the Panchayat and Respectable persons got compromised the matter between First Party and Second Party for Rs.3,70,000/- and according to compromise the Second Party had taken Rs.2,00,000/- from the First Party today i.e. 28.1.2022 and

the First Party will pay remaining amount of Rs.1,70,000/- to the Second party till 28.3.2022, and if the First Party will fail to pay the remaining amount of Rs.1,70,000/- to the Second Party till 28.4.2022, then the Second Party would be entitled to get the Cheque amount from the First Party. After the payment to Second Party, if the Hon'ble Punjab and Haryana High Court, Chandigarh acquitted the First Party by compounding the offence, then the Second Party would not have any objection. After acquittal, both the parties would not take any action against each other and both the parties would be bound by the Compromise. Both the parties have put their signatures after reading, understanding and admitting it correct with their own consent without any fear or pressure and the witnesses has signed the same. Therefore, this Compromise has been written so that it may use in time.

Dated:- 28.1.2022”

Learned counsel for the petitioner as well as learned counsel for respondent no.1-complainant have jointly submitted that the said compromise is genuine and bonafide and entered into without any undue influence, pressure or coercion and in pursuance of the said compromise, the balance amount of Rs.1,70,000/- has also been paid and the said fact is apparent from a perusal of the orders dated 20.07.2022 and 25.08.2022 passed by this Court. It is jointly submitted that the entire amount has been paid and the matter has been fully and finally settled and the complainant has no objection in case the present application is allowed and the offence is compounded and the impugned orders are set aside.

Learned counsel for the petitioner has submitted that the petitioner is a Class IV employee and is working as a Water carrier and his whole family i.e., wife and children are dependent upon him and it is with great difficulty that he has been able to compromise the matter. It is submitted that even the complainant is aware about the financial status of

the petitioner and although, the cheque in question was issued on

28.05.2015 for an amount of Rs.4 lacs but the complainant has compromised the matter for an amount of Rs.3,70,000/- and thus, prayed that the petitioner be exempted from making the payment of 15%. Reliance in this regard has been made to the paragraph 17 of the judgement 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*** for the same.

Learned counsel for the complainant-respondent No.1 has also stated that he has no objection in case the said amount of 15% is waived off in view of the special circumstances of the present case.

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

This Court has heard the learned counsel for the parties.

From the abovementioned facts, it is apparent that both the contesting parties are ad idem that a compromise has been effected between the parties without any pressure, threat or undue influence and the terms of the said compromise have been duly complied with. The compromise would go a long way in maintaining the peace and harmony between the parties and thus, a prayer has been made to the Court for compounding the offence in terms of Section 147 of the Negotiable Instruments Act, 1881 read with Section 320 (6) Cr.P.C. Since the offence relating to dishonour of cheque

has a compensatory profile and is required to have precedence over punitive mechanism, therefore, the present revision petition deserves to be allowed.

The Hon'ble Supreme Court of India in the case of **Rajendra** (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 judgement 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 abovesaid case, the petitioner therein had stated to have exhausted entire resources and thus, was not in a position to deposit the cost and in view of the said averments as well as keeping in view the special facts and circumstances of the case, a coordinate Bench of this court deemed it appropriate that cost should not be imposed upon the petitioner. In the present case, the petitioner is stated to be a Class IV employee and his whole family including his wife and children are completely dependent upon him and the poor status of the financial condition of the petitioner is

instead of the cheque amount of Rs.4 lacs, as the full and final settlement in the year 2022 and thus, in view of the said special circumstances, the petitioner is exempted from depositing the costs amounting to 15%.

It is settled law that this Court has the power to set aside the judgement of conviction against the petitioner on the basis of a valid compromise. The compromise in the present case is genuine and valid.

Keeping in view the abovesaid facts and circumstances, the present criminal revision petition and application i.e., CRM-43587-2022 are allowed and the judgment of conviction and sentence dated 21.07.2018 as well as the judgment dated 16.09.2021 are set aside and the petitioner is acquitted of the charges framed against him.

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

(VIKAS BAHL)
JUDGE

November 16, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No