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

**CRR No. 1874 of 2022 (O&M)
Date of Decision: 14.09.2022**

Sunil Kumar

......Petitioner

Vs.

Indusind Bank Ltd.

.........Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Parminder Singh, Advocate,
for the petitioner.

Mr. Sumit Batra, Advocate,
for the respondent.

*****

VIKAS BAHL, J. (Oral)

CRM-33793-2022

This is an application under Section 5 of the Limitation Act read with Section 482 of the Cr.P.C. for condonation of delay of 99 days in filing the revision petition.

Notice has been issued in the application, as well as in the main petition on 09.09.2022.

Counsel appearing for the respondent Bank has submitted that they have no objection in case the application is allowed as the matter has been compromised.

Keeping in view the stand taken by the respondent Bank, the application is allowed and the delay of 99 days in filing the revision petition is condoned.

CRR No. 1874-2022

1. Challenge in the present revision petition is to the order of conviction dated 04.01.2020, whereby the learned Judicial Magistrate Ist Class, has convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and has sentenced the petitioner to undergo rigorous imprisonment for a period of one year and has directed the petitioner to further pay compensation equalent to the cheque amount. Challenge also is to the judgment dated 16.03.2021, vide which the appeal was filed by the present petitioner has been dismissed.

2. Learned counsel for the petitioner has pointed out that after passing of the impugned judgment, the matter has been compromised and the petitioner has paid the entire amount to the respondent Bank and a statement to the said effect has been given by the complainant Bank, in which it has been specifically stated that the Bank has no objection if the conviction of the petitioner is set aside and the offence is compounded. Learned counsel for the petitioner has further submitted that he has filed CRM-33796-2022 under Section 147 read with Section 482 of the Cr.P.C. for compounding of the offence. Learned counsel for the petitioner has further submitted that in the present case, the petitioner would not be able to pay 15% of the cheque amount as the petitioner is the sole bread winner and it is with great difficulty that he has been able to pay the dues of the Bank. It is submitted that the mother of the petitioner is paralysed and thus, the petitioner also has to bear the medical expenses of his mother and take care of the needs the other family members.

3. 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** .

4. Learned counsel for the respondent Bank has submitted that the document Annexure P-1 has been issued by the Bank and the Bank has no objection in case the present case is compounded and that the petitioner has no dues outstanding towards the Bank. It is further submitted that the respondent Bank has no objection in case the amount of 15% is waived off, in view of the special circumstances of the case.

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

6. The brief facts of the case are that the respondent Bank had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, with respect to the dishonour of two cheques amounting to Rs. 4,65,000/- and Rs. 15,50,000/-, dated 06.09.2018 and the learned Judicial Magistrate Ist Class, Karnal, after considering the evidence of CW-1 Muni Ram, Area Sales Manager of the Bank, as well Ex. C-13, i.e. statements of account produced by the complainant, as well as the documents produced by the petitioner, convicted the petitioner for the offence under Section 138 and sentenced the petitioner to undergo 1 year of rigorous imprisonment, as has been detailed hereinabove.

7. An appeal was filed by the petitioner before the Sessions Judge, Karnal, which vide its detailed judgment dated 16.03.2021, and after re-appreciating the entire evidence and documents, dismissed the appeal and upheld the sentence awarded to the petitioner. The petitioner has, along with the present petition, filed CRM-33796-2020 for compounding of the said offence. Along with the present petition, a certificate issued by the complainant Bank has also been annexed as Annexure P-1,which is reproduced hereinbelow:-

"***To whom it may concern***

This is to inform Mr. Sunil Kumar son of Prem Chend r/o H.No. 200, Village Bhola Khalsa had availed Cash Credit/Term Loan of Rs. 15,50,000/- and Rs. 1,50,000/- vide A/c No. CC: 753000008308 and TL : 709000007272. he had defaulted in making the payment, and then to clear the outstanding amounts, Mr. Sunil Kumar had issued two cheques bearing No.124042 dated 6.9.2018 of Rs. 4,65,000/- and cheque bearing No. 124044 dated 6/9/2018 of Rs.15,50.000/. On presentation, the said cheque were dishonoured and the Bank had to initiate proceedings under Section 138 of the Negotiable instrument Act, and filed a complaint u/s 138 of the Act titled Indusind Bank Ltd. Vs. Bund Kumar bearing CIS case No.NI/656/2018 in which said Sunil Kumar was convicted by the Court of Ms. Suman Pallain Ld.JMid Kernal on 4.1 2020.

Mr. Sunil Kumar aforesaid filed appeal titted Sunil Kumar vs, Indusind flank Ltd. CIS No.58 of 2020 against judgment of conviction dated 4.1.2020, which has also been dismissed by the court of Sh. Jagdeep Jain Ld. Sessions Judge, Karnat vide order *dated 16.03.2020.*

Mr. Sunil Kumar aforesaid has paid the full and final payment against the aforesaid loan accounts, and the accounts have been closed. The said loan has no dues outstanding to the bank, and the bank has issued NOC to that effect on 29.09.2021. The Bank has no objection if the conviction of aforesaid Sunil Kumar in the aforesold criminal cases is set aside and the aforesaid offence is compounded by the competent court of law.

For Indusland Bank Ltd.

(Authorised signatory)"

8. A perusal of the above would show that it has been stated by the Bank that they have no objection in case the offence is compounded by the Court and the conviction of the petitioner is set aside. It is the common case of the petitioner and the complainant that the said compromise is genuine and has been entered into without any coercion or undue influence.

9. The Hon'ble Supreme Court of India in 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 7 of 10 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".

10. In the abovesaid case,the petitioner therein had been stated to have exhaused her entire resources and thus, was not in a position to deposit the cost. In the present case, it is the case of the petitioner that he is the sole bread winner in his family and with great difficulty, after collecting all his resources, he has been able to pay the Bank and clear the

dues but does not have the resources to pay 15% of the cheque amount. It is also stated that the mother of the petitioner is suffering from paralysis and the medical expenses regarding the same also have to be borne by the petitioner.

11. Thus, keeping in view the said averments, as well as the said facts and circumstances of the case, this court deems it appropriate that cost should not be imposed upon the present petitioner.

12. Keeping in view the abovesaid facts and circumstances, as well as the law on the point, CRM-33796-2022 for compounding of the offence is allowed and the main revision petition is also allowed and the impugned judgments dated 04.01.2020 and 16.03.2021 are set aside and the petitioner is acquitted of the said charges.

Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

September 14, 2022 **(VIKAS BAHL)**
nitin **JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	No