

117

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

CRR-1940-2022 (O&M)
Date of decision : 19.09.2022

Gurlal Singh

...Petitioner

Versus

Subash Chander and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. A.S. Khosa, Advocate for the petitioner.

Mr. H.P.S. Sidhu, Advocate for the respondents.

VIKAS BAHL, J. (ORAL)

CRM-35359-2022

This is an application filed under Section 5 of the Limitation Act read with Section 482 of Cr.P.C. for condonation of delay of 500 days in filing the Criminal Revision.

Learned counsel for the applicant-petitioner as well as respondents have jointly submitted that the matter has been compromised and thus, pray that delay in filing the Criminal Revision be condoned.

Keeping in view the facts which have been mentioned in the application as well as the fact that the matter has been compromised, the delay of 500 days in filing the present Criminal Revision is condoned.

Application stands disposed.

CRR-1940-2022 (O&M) and CRM-35361-2022

Challenge in the present Criminal Revision is to the judgment dated 30.07.2016 passed by the Judicial Magistrate Ist Class, Fazilka, vide which, the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and has been sentenced to undergo simple imprisonment for a period of two years and has also been directed to pay compensation to the tune of Rs.9,00,000/- to the complainant within a period of two months from 30.07.2016.

Challenge has also been made to the judgment dated 16.02.2019 passed by the Additional Sessions Judge, Fazilka, vide which, the appeal preferred by the present petitioner has been dismissed.

Learned counsel for the petitioner has submitted that after passing of the abovesaid judgments, the matter has been compromised and accordingly, the petitioner has moved an application bearing No.CRM-35361-2022, alongwith main Criminal Revision, under Section 320 Cr.P.C. for compounding of the offence. It is further submitted that the compromise deed dated 01.05.2019, which is in the form of affidavit of complainant-Subhash Chander, has been annexed as Annexure A-2 which is at page 82 of the paper book, as per which, it has been stated that complainant has received the cheque amount.

On the other hand, learned counsel appearing on behalf of respondents has also reiterated the fact that the matter has been compromised and the complainant has been paid the cheque amount and nothing is due from the petitioner and the complainant has no objection in case the judgments passed by the Courts below are set aside and application for compounding of offence is allowed.

This Court has heard the learned counsel for the parties and has

perused the paper book.

In the present case, the respondents had filed a complaint under Section 138 read with Section 142 of the Act of 1881 with respect to dishonour of cheque dated 15.04.2013 amounting to Rs.7,44,841.25 paise against the present petitioner. The trial Court, after considering the entire evidence, had convicted the petitioner as has been stated hereinabove. An appeal preferred by the petitioner against the same was also dismissed vide order dated 16.02.2019 passed by the Additional Sessions Judge, Fazilka.

It is the case of both the parties that the matter has been compromised and accordingly, application bearing No.CRM-35361-2022 under Section 320 Cr.P.C. for compounding of the offence has been filed. The compromise deed dated 01.05.2019 which is in the form of affidavit of complainant-Subhash Chander is reproduced hereasunder:-

“I, Subash Chander s/o Shri Milakh Raj r/o Shedo Ke Utar Chand Mari Tehsil and District Fazilka, hereby solemnly affirm and declare as under:

1. That I am partner of M/s Kashmir Chand Trading Company. New Grain Market Fazilka, Deponent filled a suit u/s 138 N.I.Act against gurlal Singh s/o Bagicha Singh r/o Churi Wala Chisti Tehsil and District Fazilka, on 30-7-2016 the court of Neeraj Goyal, PCS Judicial Magistrate 1st Class, Fazilka regarding Cheque, in which Gurlal Singh was Convicted for 2 years or 900000/- as compensation.

2. That Gurlal Singh filed an appeal tiled as Gurlal Singh vs Subash Chander against order dated 30-7-2019 in the court of Additional Session Judge Fazilka. Same was dismissed by the court Gaurav Kalia Additional Session Judge Fazilka vide order dated 16-2-2019.

3. That compromise has been effect with Gurlal with the intervention of Panchayat, relatives and respected persons. I

received cheque amount as per compromise. Now no amount due against Gurlal Singh.

*Sd/- Deponent
(Subash Chander)*

Verified that the contents of above said statement are true and correct to my knowledge. No part of it is false and nothing has been concealed therein.

*Dated: Sd/- Deponent
(Subash Chander)”*

A perusal of the above compromise would show that the complainant has specifically stated that the matter has been compromised and he has received the cheque amount as per the compromise and no amount is due from the present petitioner.

Learned counsel for the respondents has also reiterated the said fact.

Learned counsel for the petitioner is also ready to deposit 15% of the cheque amount i.e. Rs. 1,11,727/- within a period of two months from today with the Punjab State Legal Services Authority in accordance with the judgment passed by the Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H.** reported as **(2010) 5 SCC 663.**

From the above facts, it is apparent that both the contesting parties are ad idem that the 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 Act of 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.

A Coordinate Bench of this Court in a judgment dated 09.03.2017 passed in CRR no.390 of 2017 titled as **“Kuldeep Singh vs. Vijay Kumar and another”** has held as under:-

*“Reliance can be placed on **Kaushalya Devi Massand vs. Roopkishore Khore, 2011 (2) RCR (Criminal) 298** and **Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097**. The revisional jurisdiction of the High Court in terms of Section 401 Cr.P.C. would result in bringing about ends of justice between the parties in the event of finding that the compromise is genuine, bonafide and free from any undue influence.*

The compromise in question would serve as a everlasting tool in favour of the parties for which indulgence can be given by this Court. The revisional exercise would also be in consonance with the spirit of Section 147 of Negotiable Instruments Act.

*The principle as laid down in **Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097**, would be squarely fortified if the compromise in question is allowed to be effected between the parties with leave of the Court.*

In view of aforesaid, impugned judgment dated 19.01.2017 passed by Additional Sessions Judge, Sri Muktsar Sahib vide which conviction and sentence of the petitioner was upheld stands quashed.

*The revision petition is allowed subject to deposit of 15% of the cheque amount as per ratio laid down in **Damodar S. Prabhu's case (supra)** to State Legal Services Authority, failing which this order will be of no consequence. Necessary consequences to follow.”*

Reliance in the abovesaid judgment was also placed upon the

judgment of Hon'ble Supreme Court in ***Damodar S. Prabhu's*** case (*supra*) and thus, as per settled law, this Court has the power to set aside the judgment of conviction against the petitioner on the basis of a valid compromise. The compromise in the present case prima facie, is genuine and valid.

Thus, keeping in view the abovesaid facts and circumstances, the present Criminal Revision as well as application bearing No.CRM-35361-2022 are allowed and the judgment as well as order on quantum of sentence dated 30.07.2016 passed by the Judicial Magistrate Ist Class, Fazilka and also judgment dated 16.02.2019 passed by the Additional Sessions Judge, Fazilka, are set aside. The same is however, subject to the petitioner depositing 15% of the cheque amount i.e., Rs. 1,11,727/- within a period of two months from today with the Punjab State Legal Services Authority.

It is made clear that in case, the petitioner does not deposit an amount of Rs. 1,11,727/- within a period of two months from today, with the Punjab State Legal Services Authority, then, the present criminal revision would be deemed to have been dismissed.

Since, the main case has been decided, application bearing CRM-35362-2022 for suspension of sentence of applicant-petitioner is rendered infructuous and is disposed of as such.

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

19.09.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No