

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-1626-2021(O&M)
Date of decision : 24.05.2022

Vijay Kumar

... Petitioner

Versus

Arun Sharma son of Sh. Rameshwar Dass, since deceased through his LRs
Shashi Sharma and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Rajesh Bansal, Advocate
for the petitioner.

Mr. Kuljit Singh, Advocate for
Mr. Gaurav Deep Goel, Advocate
for respondent no.1-complainant.

Mr.Munish Sharma, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

Challenge in the present revision petition is to the judgment of conviction and order of sentence dated 12.03.2018 passed by the Judicial Magistrate Ist Class, Panipat, vide which the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (in short “N.I. Act”) and has been sentenced to undergo simple imprisonment for one year and has also been directed to pay compensation of Rs.3.70 lacs to the complainant and deposit the amount of Rs.5000/- as fine. Challenge is also to the judgment dated 06.09.2021, vide which the appeal filed by the present petitioner has been dismissed by the Additional Sessions Judge, Panipat and conviction and the sentence awarded has been upheld.

In the present case, a complaint under Section 138 of the N.I.

no.738831 dated 21.07.2014 for an amount of Rs.3 lacs which was returned unpaid on the ground of “funds insufficient”. After the said dishonour, legal notice dated 01.08.2014 had been served and after the petitioner did not respond to the same, the complaint had been instituted. The learned trial Court, after considering the evidence of the complainant as well as the evidence of the witnesses examined by the petitioner in his defence and the documents on record, convicted the present petitioner under Section 138 of the N.I. Act and sentenced him to undergo simple imprisonment for a period of 1 year, as has been detailed hereinabove. The appellate Court re-examined the entire matter and after reappraisal of the documents and evidence on record, dismissed the appeal.

Learned counsel for the petitioner has submitted that in the present case, the matter had been referred to the Mediation Centre, District Courts, Panipat and a compromise has been arrived and it has been agreed that an amount of Rs.2,40,000/- would be paid as full and final settlement for the entire dispute and the complainant party would have no objection in case the present revision petition is allowed. It is further submitted that the complainant has died and the compromise has been entered into by the wife of the complainant, who had been impleaded as an LR of the complainant even before the trial Court as is apparent from page 54 of the paper book where the impugned judgment passed by the trial Court starts.

Learned counsel for respondent no.1-complainant has also reiterated the fact that the matter has been compromised and the complainant has been paid the entire amount as per settlement. The terms of the said settlement are reproduced hereinbelow:-

“1. The Mediation Centre got settled the matter between the parties on the following terms:-

(i) The matter/dispute in above titled case CRR-1626-202 1, fixed for 10/01/2022 is settled in lump sum amount of Rs.2,40,000/- (Two lacs forty thousand only). The First party is ready to give lump sum amount of Rs.2,40,000 (Two lacs forty thousand only) against his liability towards first party in installments as:-

(a) That First installment of Rs.1,50,000:- (One lakh fifty thousand only) is already given by first party to second party on 05/01/2021 i.e. today in mediation center in shape of demand draft /pay order bearing no. 937283 dated 15/12/2021 in the name of Shashi Sharma amounting to Rs.1,50,000/- (One lakh fifty thousand only) of Punjab National Bank, S.D. Modern Sr. Secondary School, Panipat.

(b) That First party undertakes to give Second installment (rest amount) of Rs.90,000/-(Ninety thousand only) to Second party on or before 10 May 2022.

(ii) That the grievance between both the parties has settled and nothing left due between both the parties in above said cases.

2. That the second party has no objection if the aforesaid revision petition/appeal stands allowed and the offence is compounded before the competent Court and also the second party shall not pursue the instant case in any manner.

3. That both the parties further undertakes that they will not file any criminal or civil litigation against each other in future related to above mentioned case.

4. That the parties have settled their dispute out of their own free will and consent of the parties has not been obtained by force or by undue influence or by fraud or by coercion or with any kind of pressure from any side.”

Learned counsel for the petitioner has submitted that in the present case, the financial condition of the petitioner is very weak and the petitioner has taken a loan for repayment of the settled amount to the complainant and thus, he is not in position to pay 15% of the cheque amount as the petitioner has been in custody since the past 4 months and has no source of livelihood also.

Learned counsel for the petitioner has submitted that the poor

although the cheque amount was of Rs.3 lacs and the compensation amount awarded was of Rs.3.70 lacs, the complainant has compromised the matter by accepting a total amount of Rs.2.40 lacs.

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***.

Learned counsel for respondent no.1-complainant has also stated that they have no objection in case the said amount of 15% is waived off in view of the special circumstances in 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 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 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 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 judgment 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 her entire resources and thus, was not in a position to deposit the cost. In the present case, the petitioner is stated to be a very poor person who has no source of livelihood and it has been submitted that only after taking a loan, he has been able to enter into the present compromise and pay an amount of Rs.2.40 lacs to the complainant. The complainant has also agreed to accept the amount of Rs.2.40 lacs as full and final settlement,

keeping in view the financial position of the petitioner in spite of fact that the cheque in question was for an amount of Rs.3 lacs and the compensation awarded by the trial Court was of Rs.3.70 lacs and the same also prima facie shows that the plea taken by the petitioner with respect to his poor financial status, is correct and thus, keeping in view the said fact and also the special facts and circumstances of the present case, this Court deems it appropriate that the costs should not be imposed upon the present petitioner. Learned counsel for the complainant has reiterated the fact that the balance amount, as stated in the settlement, has also been paid and nothing is due towards the complainant from the petitioner.

It is settled law that this Court has the power to set aside the judgment of conviction against the petitioner on the basis of a valid compromise. Thus, keeping in view the above said facts and circumstances, the present revision petition is allowed and the judgment of conviction as well as order of sentence dated 12.03.2018 passed by the Judicial Magistrate Ist Class, Panipat as well as the judgment dated 06.09.2021 passed by the Additional Sessions Judge, Panipat are set aside.

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

(VIKAS BAHL)
JUDGE

May 24, 2022
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No