

CRR-2948-2019

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

**CRR-2948-2019 (O & M)
Date of decision: 13.09.2022**

M/s Sahyog Industries and another

...Petitioners

Versus

M/s Haryana Ispat Udyog and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. J.C.Mahindro, Advocate,
for the petitioners.

Mr. Jashan Sekhon, Advocate for
Mr. Shiv Kumar, Advocate,
for respondent No.1.

Mr. Pawan Kumar Jhanda, AAG, Haryana.

HARNARESH SINGH GILL, J. (ORAL)

In the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') by complainant-respondent No.1, petitioner No.2 was convicted under Section 138 of the Act, vide judgment dated 13.07.2016 and order dated 18.07.2016 passed by the learned Judicial Magistrate, 1st Class, Faridabad, and sentenced to undergo simple imprisonment for a period of six months and to pay compensation to the tune of Rs.62,71,970/- to respondent No.1-complainant.

The appeal against the said judgment and order was dismissed by the learned Additional Sessions Judge, Faridabad, on 18.10.2019.

Still aggrieved, the petitioners have filed the present revision petition.

Vide order dated 18.02.2022 passed by this Court, the matter was referred to the Mediation and Conciliation Centre, Faridabad, for an

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amicable settlement, if any, between the parties.

Learned counsel for the petitioners submits that a compromise was arrived at between the parties before the Mediation and Conciliation Centre, Faridabad, and that in pursuance thereof, petitioner No.2 agreed to pay a total sum of Rs.30 lakh to respondent No.1 as full and final settlement, and that in pursuance of the compromise, the entire agreed amount has already been paid by the petitioners to respondent No.1-complainant, which is evident from the photocopy of demand draft dated 25.08.2022 and the receipt dated 31.08.2022. The aforesaid copy of demand draft and the receipt are taken on record as Mark-A.

Learned counsel for respondent No.1 submits that respondent No.1 has received the entire agreed amount.

Learned counsel for the petitioners and the learned counsel for respondent No.1-complainant, are *ad idem* and submit that as the matter stands compromised, necessary permission may be granted to the parties to compound the offence under Section 138 of the Act; the impugned judgment and orders passed by the trial Court and the Appellate Court may be set aside and the petitioners may be acquitted of the charge(s) framed against him.

At this stage, learned counsel for the petitioners submits that the petitioner, in order to pay the settlement amount to the complainant, has exhausted his entire resources 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

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terms of the judgment in Damodar S. Prabhu's case (supra) may be reduced/waived off.

Learned counsel for respondent No.1-complainant does not have any objection to the aforesaid prayer made by the counsel for the petitioners.

The Hon'ble Supreme Court in Madhya Pradesh State Legal Services Authority Vs. Prateek Jain & Anr., (2014)10 SCC 690, held that it would be for the parties, particularly the accused person, to make out a plausible case for the waiver/reduction of the costs and to convince the concerned Court about the same. It was held as under:-

“....Having regard thereto, we are of the opinion that even when a case is decided in Lok Adalat, the requirement of following the guidelines contained in Damodar S. Prabhu (supra) should normally not be dispensed with. However, if there is a special/specific reason to deviate therefrom, the Court is not remediless as Damodar S. Prabhu (supra) itself has given discretion to the concerned Court to reduce the costs with regard to specific facts and circumstances of the case, while recording reasons in writing about such variance. Therefore, in those matters where the case has to be decided/settled in the Lok Adalat, if the Court finds that it is a result of positive attitude of the parties, in such appropriate cases, the Court can always reduce the costs by imposing minimal costs or even waive the same. For that, it would be for the parties, particularly the accused person, to make out a plausible case for the waiver/reduction of costs and to convince the concerned Court about the same. This course of action, according to us, would strike a balance between the two competing but equally important interests, namely, achieving the objectives delineated in Damodar S. Prabhu (supra) on the one hand and the public interest

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which is sought to be achieved by encouraging settlements/resolution of case through Lok Adalats.”

Learned counsel for the petitioners apart from heavily relying upon the said judgment, relies upon the order dated 06.08.2019 passed in Rajendra Vs. Nand Lal, 2020(1) RCR (Crl.) 166, wherein the Hon'ble Apex Court, has held as under:-

“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).”

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In the present case, the complainant has already accepted and received the entire settled amount and has no objection in case the costs to be imposed in terms of the judgment of the Hon'ble Apex Court in Damodar S. Prabhu's case (supra), is reduced/waived off.

After hearing the learned counsel for the parties and taking into consideration the fact that the parties have settled their dispute by way of the compromise dated 10.05.2022, 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. The costs to be imposed in terms of the aforesaid judgment is reduced to Rs.3,00,000/- from Rs.6,27,196/- (15% of the cheque amount).

Accordingly, the impugned judgment and order passed by the Courts below are set aside. The complaint under Section 138 N.I. Act is dismissed and petitioner No.2 is acquitted of the notice of accusation served upon him. The costs of Rs.3,00,000/- shall be deposited by petitioners with the District Legal Service Authority, Faridabad, within one month from today, failing which the present petition shall stand automatically dismissed.

Disposed of in the aforementioned terms.

13.09.2022

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No