

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

107

CRR-326-2020 (O&M)  
Decided on : 18.05.2022

Ravi Kumar Arora

. . . Petitioner

Versus

Ajay Kumar and another

. . . Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

**PRESENT:** Mr. P. K. S. Phoolka, Advocate  
for the petitioner.

Mr. Parveen Sharma, Advocate for  
Mr. Paras Sharma, Advocate  
for respondent No. 1.

Mr. Sarabjit S. Cheema, A.A.G., Punjab  
for respondent No. 2-State.

\*\*\*\*

**VIKAS BAHL, J. (Oral)**

Challenge in the present criminal revision is to the judgment dated 26.04.2018 vide which the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 and has been sentenced vide order of sentence dated 26.04.2018 to undergo rigorous imprisonment for one year and has also been directed to pay compensation to the complainant to the tune of Rs.95,000/- along with interest @ 9% per annum from the date of issuance of cheque in question till the date of the judgment.

Challenge is also to the judgment and order dated 04.09.2019 vide which the appeal filed by the present petitioner had been dismissed by the Additional Sessions Judge, Bathinda.

Brief facts of the case are that respondent No. 1 had filed complaint under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 of the Indian Penal Code for the dishonor of cheque No. 153658 dated 06.05.2013 of an amount of Rs.95,000/- drawn on Canara Bank, The Mall, Bathinda by the petitioner in favour of the complainant. The said cheque was dishonored with the remarks "Funds insufficient" vide cheque returning memo dated 08.05.2013 and a legal notice dated 28.05.2013 was issued and when the payment was not made within the stipulated time period, then the present complaint under Section 138 of the Negotiable Instruments Act was filed as stated hereinabove and the petitioner was convicted under Section 138 of the Negotiable Instruments Act and the appeal filed by the petitioner challenging his conviction was then dismissed.

Learned counsel for the petitioner as well as the respondent No. 1 have submitted that after passing of the said two judgements, the matter has been compromised as per compromise dated 18.01.2020 and the complainant has no objection in case the present appeal is allowed and judgements of the Courts below are set aside.

An application i.e. CRM-33788-2021 under Section 482 Cr.P.C. read with Section 320(6) Cr.P.C. has been filed with a prayer for seeking permission for compounding the offence under Section 138 of the Negotiable Instruments Act, 1881 and for setting aside the impugned judgments.

In the said application, it has been specifically stated that the matter has been compromised. The terms of the compromise dated 18.01.2020 are reproduced hereinbelow:

*“Ravi Kumar Arora S/o Chunni Lal R/o Gali No. 11/3, Murgi Khane Wali Gali, Dube Colony, Pararam Nagar, Bathinda.*

*Party No.1*

*Ajay Kumar S/o Maheshwaripal, R/o House No. 22176, Power House Road, Bathinda.*

*Party No.2*

*That between the above said both parties there was money dispute regarding which court case COMA/39486/2013 was pending in which with the intervention of respectables and panchayat both the parties have compromised the matter conditions of compromise are as under:*

- 1. That party no.2 the case which it has filed against party no.2 regarding the cheque under section 138 NI Act at Hon'ble Bathinda court in that Hon'ble Bathinda court had convicted party no.1 regarding which party no.1 had filed appeal in Hon'ble Sessions court Bathinda and Hon'ble Court dismissed the appeal.*
- 2. That now both the parties have compromised the matter regarding the above said dispute and as per the compromise party no.2 the amount which he has to take from party no.1 he has received the same and nothing is due.*
- 3. That if Hon'ble Punjab and Haryana High Court Chandigarh cancels the complaint and acquits party no.1 then party no.2 shall have no objection and party no.2 shall be bound to make statement in favor of party no. 1*
- 4. That from today thereafter both the parties regarding the dispute shall not file any complaint or legal action against each other and from today as per the compromise after receiving the due amount both the parties shall get cancelled all the complaint/applications pending against each other.*
- 5. That both the parties shall be bound the terms of compromise.*
- 6. That the above said compromise has been done without any pressure in the presence of respectable persons and the compromise is being written so it can be used in time.*

*Entered in my Notarial Register  
At Sr.No. 44 Register no.9.  
Dated 18/01/2020.*

*Date*

*Party No. 1*

*-sd-*

*Ravi Kumar Arora S/o Chunni  
Lal R/o Gali No. 11/3,  
Murgikhane Wali Gali,  
Dube Colony, Parsram Nagar,  
Bathinda.*

*Adhaar No. 807771472155*

*Witness*

*-sd-*

*Party No.2*

*-sd-*

*Ajay Kumar S/o Maheshwaripal  
House No. 22176, House house  
Road, Bathinda.*

*Adhaar No. 2995 1086 7349*

*ATTESTED*

*-sd-*

*RAJNI GARG*

*Advocate & Notary*

*District Courts, Bathinda*

*18 JAN 2020”*

Learned counsel for the petitioner has submitted that in the present case, the petitioner would not be able to pay 15% of the cheque amount as the petitioner is a 60 year old handicapped person and does not have any source of income and it is only after taking money from his family members, that he has been able to return the money of the complainant and compromise the matter.

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 the complainant-respondent No. 2 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 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 been stated to have exhausted his entire resources and thus, was not in a position to deposit the costs. In the present case, the petitioner is stated to be a 60

year old handicapped person, having no source of livelihood and is stated to have borrowed money from his family members in order to return the money of the complainant and compromise the matter. Thus, in view of the said averments, as well as keeping in view the special facts and circumstances of the present case, this Court deems it appropriate that costs should not be imposed upon the present petitioner.

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 revision petition is allowed and the impugned impugned judgment and order of sentence dated 26.04.2018 and the judgment and order dated 04.09.2019 are set aside.

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

**May 18<sup>th</sup>, 2022**  
*Mehak*

**(VIKAS BAHL)**  
**JUDGE**

Whether reasoned/speaking?  
Whether reportable?

Yes/No  
Yes/No