

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

CRM-M-5501-2023

DATE OF DECISION:-02.02.2023

Sumesh Sharma

...Petitioner.

V.

Navneet Poriya

...Respondent..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sanchit Punia, Advocate,
for the petitioner.

HARKESH MANUJA, J. (ORAL)

By way of present petition under Section 482 Cr.P.C., prayer has been made for quashing of complaint case bearing No.1503/2020 (Annexure P-2) filed against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short, “Act”), followed by summoning order dated 15.07.2020 (Annexure P-3) as well as the order dated 18.10.2022 (Annexure P-7).

The facts of the case are that on account of dishonour of cheque No.888970 dated 29.02.2020, a complaint under Section 138/141 of the Act came to be filed against the petitioner at the instance of respondent, resulting into passing of a summoning order dated 15.07.2020. On account of covid-19 situation there being intermittent breaks in the court hearing, the compliance of summoning got extended till 18.10.2022.

On the said date i.e. 18.10.2022, the petitioner moved an application before the trial court through his counsel for deposit of the cheque amount, which was not even entertained by the trial court and

returned back in original, followed by issuance of non-bailable warrants for 09.02.2023. It is the said order dated 18.10.2022 (Annexure P-7 at page 20) which has been impugned by way of present petition, besides even challenging the complaint as well as the summoning order dated 15.07.2020.

Learned counsel for the petitioner submits that in the present case, cheque amount is Rs.21,250/- and the petitioner is ready to deposit the said amount in the shape of draft in the name of respondent-complainant and in order to show his bonafide, even a photocopy of demand draft dated 26.12.2022 has already been placed on record as Annexure P-6.

Relying upon the decision passed by Hon'ble the Supreme Court in “***Damodar S. Prabhu vs. Sayed Babalal H., 2010(5) SCC 663***, learned counsel further submits that the petitioner is even ready to deposit a sum of 10% over and above the cheque amount. Relevant portion from para 15 of the aforesaid judgment is reproduced hereunder for reference:-

“THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made

before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.”

Learned counsel also refers to decision of Hon'ble the Supreme Court in **“M/s Meters and Instruments Private Ltd and another vs. Kanchan Mehta, 2017 AIR (Supreme Court) 4594**, so as to contend that for the purpose of compounding of offence under Section 138 of the Act, in case, the accused is ready to tender the cheque amount along with cost, the consent of the complainant is not even required. Relevant para 18 of the aforesaid judgment is reproduced hereunder:-

“18. From the above discussion following aspects emerge:

i) Offence under [Section 138](#) of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under [Section 139](#) but the standard of such proof is “preponderance of probabilities”. The same has to be normally tried summarily as per provisions of summary trial under the [Cr.P.C.](#) but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of [Section 258](#) Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to [Section 143](#), to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under [Section 357\(3\)](#) Cr.P.C. to award suitable compensation with default sentence under [Section 64](#) IPC and with further powers of recovery under [Section 431](#) Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per [Section 264](#) Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to [Section 143](#) becomes necessary, where sentence of one year may have to be awarded and compensation under [Section 357\(3\)](#) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.”

Learned counsel, in addition submits that the petitioner is even willing to deposit some reasonable amount as costs towards the filing of complaint at the instance of respondent.

I have heard learned counsel for the parties and gone through the paper book.

The summoning order in the present case was passed against the petitioner on 15.07.2020, however, on account of covid-19 situation, the appearance of the petitioner remained deferred till 18.10.2022 and on the same day, an application was filed at his instance for deposit of the cheque amount, however, the same as per learned counsel for the petitioner was not entertained by the trial court and was returned back in original. In order to

show his bonafide, the petitioner has even placed on record demand draft dated 26.12.2022 (Annexure P-6), amounting to Rs.21,250/- i.e. the cheque amount.

Considering the aforesaid facts and circumstances of the case as well as the law referred to in the preceding part of the order, I deem it appropriate to request the trial court to entertain the application dated 18.10.2022 (Annexure P-5) filed at the instance of the petitioner seeking compounding of offence under Section 138 of the Act, for which, he has been summoned vide order dated 15.07.2020. The trial court is also requested to take into consideration the exposition of law laid down in ***Damodar's case*** (supra) and ***M/s Meters' case*** (supra) while dealing with the said application.

Taking into consideration the fact that the petitioner happens to be an old man of 69 years of age, besides even his critical medical condition as well, the trial court is requested to entertain the application moved at the instance of petitioner through his counsel along with prayer for seeking exemption from personal appearance, in a sympathetic manner.

In view of the discussion made herein above, order dated 18.10.2022 (Annexure P-7) passed by the trial court is thus, quashed.

Accordingly, the petition is disposed of.

02.02.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No