

CRR-360 of 2021 (O&M)

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

CRR-360 of 2021 (O&M)
Reserved on: 09.02.2023
Pronounced on: 20.02.2023

Ashok Kumar

.....Petitioner

Versus

Surinder Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Baljinder Singh Singhvi, Advocate,
for the petitioner.

Mr. Vinok Kumar Sharma, Advocate,
for the respondent.

NAMIT KUMAR, J.

CRM-9599 of 2021

This application has been filed by the applicant-petitioner under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of 1802 days in filing the revision petition.

Pursuant to the notice in the application, learned counsel for the non-applicant-respondent has filed reply by way of CRM-5282 of 2023, which is taken on record. According to the reply, parties have compromised the matter and the respondent has no objection, if the delay of 1802 days in filing the revision petition is condoned.

In view of the above, application is allowed. Delay of 1802 days in filing the revision petition is condoned.

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Petitioner has filed the instant revision petition under Section 401 Cr.P.C. assailing judgment and order dated 06.06.2015 passed by learned Chief Judicial Magistrate, Sri Muktsar Sahib, whereby he has been convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.3,000/- under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and in default of payment of fine to further undergo rigorous imprisonment for one month and also the judgment dated 27.01.2016 passed by the Additional Sessions Judge, Sri Muktsar Sahib, whereby appeal of the petitioner against the aforesaid judgment of conviction and order of sentence dated 06.06.2015 has been dismissed.

Brief facts of the case are that respondent-complainant Surinder Kumar filed a complaint under Section 138 of the Act against petitioner-Ashok Kumar on the ground that on 16.12.2012 petitioner took cash loan of Rs. 1,80,000/- from him and executed one pronote and receipt dated 16.12.2012 in his favour after receiving Rs. 1,80,000/- in the presence of marginal witnesses. It is averred that petitioner also agreed to pay interest at the rate of 1.5% per month and promised to repay the loan amount along-with interest on his demand. In order to discharge his legal liability, petitioner issued one cheque bearing no. 502601 dated 29.04.2013 amounting to Rs. 1,80,000/- drawn at Bank of Baroda, Sri Muktsar Sahib out of his account No.35340100000494 in his favour as part payment of cash loan and promised him that cheque will be honored on its presentation to the

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bank. When the said cheque was presented in his banker i.e. Punjab & Sind Bank for encashment, it was forwarded to the Bank of Baroda, Sri Muktsar Sahib through clearing house and it was dishonored with remarks 'Funds Insufficient' vide memo dated 14.05.2013. Thereafter the respondent issued a legal notice to the accused on 04.06.2013 through his counsel but in spite of service of notice, petitioner did not make payment to him. On the basis of the preliminary evidence adduced by the respondent-complainant, petitioner was ordered to be summoned vide order dated 12.12.2013 for the commission of an offence punishable under Section 138 of the Act. Petitioner appeared and was granted bail. Finding a prima-facie case, notice of accusation for the commission of offence punishable under Section 138 of the Act was served upon the petitioner to which he pleaded not guilty and claimed trial. After hearing learned counsel for the parties and on appreciation of evidence on record, petitioner was convicted and sentenced as above by the trial Court vide judgment of conviction and order of sentence dated 06.06.2015.

The aforesaid judgment and order dated 06.06.2015 were challenged by the petitioner in appeal before the learned Additional Sessions Judge, Sri Muktsar Sahib, which was dismissed vide judgment dated 27.01.2016.

Feeling aggrieved, petitioner has filed the instant revision petition with a prayer that both the aforesaid judgments passed by the Courts below be set aside and the petitioner may be acquitted of the charges levelled against him.

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Learned counsel for the petitioner submits that during the pendency of the instant revision petition before this Court, the matter got compromised between the parties vide compromise deed Annexure A-1 to CRM-48027 of 2022. According to the compromise, petitioner will pay the cheque amount of Rs.1,80,000/- to the respondent after getting his retiral benefits. He further submits that petitioner has already undergone the sentence of one year and has paid the fine of Rs.3,000/- imposed by the Courts below.

Learned counsel for the petitioner submits that due to dismissal order issued against him, the petitioner could not receive the retiral benefits and as such he is not in a position to pay the costs. He further submits that petitioner is 61 years old person and no one is in his family to look after him and one Hari Ram is taking care of him.

Learned counsel for the petitioner relies upon the judgment in the case of ***Tilak Kataria vs. State of Haryana and another***, 2021 (3) RCR (Criminal) 404, wherein, after considering various judgments of the Apex Court, it has been held that when the complainant does not have any objection, the proceedings should come to an end.

The Hon'ble Supreme Court in ***Ramgopal and another vs. State of Madhya Pradesh***, 2021(4) RCR (Criminal) 322, has held that in non-compoundable cases of pre-dominantly private nature, even if compromise is reached after conviction, the proceedings can be quashed under Section 482 Cr.P.C. Further, the compromise in the present case is found to be fully covered in consonance of judgments

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and directions issued by the Courts in ***Kulwinder Singh and others vs. State of Punjab***, 2007(3) RCR (Criminal) 1052 and ***Gian Singh vs. State of Punjab and another***, 2012(4) RCR (Crl.) 543.

The Hon'ble Supreme Court in ***A.T. Sivaperumal vs. Mohammed Hyath (D) by LRs***, decided on 27.03.2017, has held that once the settlement between the parties has been arrived at, the conviction can also be set aside and the litigation too. Similar view has been taken by a Coordinate Bench of this Court in the case of ***Jagmohan Vs. Sandeep Aggarwal and another***, 2021(4) RCR (Criminal) 86.

He further relies upon the judgment of Hon'ble Supreme Court in the case of ***Damodar S. Prabhu vs. Sayed Babalal H. reported as (2010) 5 SCC 663*** and prays that in view of the peculiar facts and circumstances of the present case, the imposition of costs, in terms of the judgment in Damodar S. Prabhu's case (supra), may be waived off.

The Hon'ble Supreme Court in ***Madhya Pradesh State Legal Services Authority Vs. Prateek Jain & another reported as (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,*

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

Learned counsel for the petitioner apart from relying upon the said judgment, relies upon the order dated 06.08.2019 passed in **Rajendra Vs. Nand Lal reported as 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

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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)."

Learned counsel for the respondent does not have any objection to the aforesaid prayer made by the counsel for the petitioner.

Learned counsel for the parties are ad-idem and submit that as the matter stands compromised, CRM-48027 of 2022 filed under Section 320 read with Section 482 Cr.P.C. for compounding the offence under Section 138 of the Act filed by the petitioner in terms of compromise (Annexure A-1) may be allowed and permission may be granted to the parties to compound the offence under Section 138 of the Act in view of the law laid down by the Hon'ble Supreme Court in ***Damodar S. Prabhu vs. Sayed Babalal H***, 2010 (2) RCR (Criminal) 851; the impugned judgments and order passed by the learned trial

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Court and the learned Appellate Court may be set aside and the petitioner be acquitted of the charge.

I have heard learned counsel for the parties and perused the record.

It is not disputed that parties have compromised the matter; sentence awarded to the petitioner has already been undergone by him and fine has also been paid. In view of the compromise effected between the parties, in my considered view, no useful purpose would be served by keeping the litigation pending to secure the ends of justice. Thus, this Court grants permission to compound the offence punishable under Section 138 NI Act.

In view of the above, the impugned judgment of conviction and order of sentence dated 06.06.2015 passed by the learned Chief Judicial Magistrate, Sri Muktsar Sahib, and the judgment dated 27.01.2016 passed by the learned Additional Sessions Judge, Sri Muktsar Sahib, are set aside; the complaint under Section 138 of the Act stands dismissed and the petitioner stands acquitted of the charge. The present petition is allowed. Needless to say that the parties shall remain bound by the terms and conditions of the compromise.

Pending application(s), if any, stand disposed of in view of the abovesaid judgment.

20.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No