IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-12-2021
Reserved on 15.02.2023
Pronounced on : 20.03.2023

Sushil Kumar ......Petitioner

Vs.

HDFC Bank ......Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abhishek Lubana, Advocate for the petitioner(s).

Mr. Saurabh Bhardwaj, Advocate for the respondent.

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ANOOP CHITKARA J.

Criminal Complaint	No. 1932-II of 2016, CIS No.N ACT/1801/2016 under Section 138 & 142 of the Negotiable Instruments Act, District Hisar Date of decision:-07.09.2018
Criminal Appeal	No. 184 of 2018 CIS No.564-2018, Additional Sessions Judge, District Hisar

1. The petitioner arraigned as accused in the above captioned complaint case, was convicted and sentenced vide judgment of conviction dated 07.09.2018, which was affirmed by the appellate Court vide judgment dated 16.11.2019, has come up before this Court under Section 401 Cr.P.C. in revision for setting aside of the said order.

2. During the pendency of the present petition, parties arrived at settlement and prayed for setting aside of judgment of conviction and order of sentence on the basis of compromise. The petitioner faced criminal prosecution by the private respondent because of the dishonor of the cheque in question. Thus, the opposition of the State's counsel to this compromise is formal.

3. This court vide order dated 16.01.2023 had asked the parties to appear before trial Court/Illaqa Magistrate/Duty Magistrate for recording their statement and asked the parties to appear before the concerned court and had asked the said court to give its report as per the format. The report reads as follows:

Name of the reporting Court	Sh. Sunil, JMIC Hisar

complaint No.	Dated	Decided by	Sections
1932-II	14.10.2016	JMIC Hisar	138 & 142 of NI Act

Criminal Case no. before trial Court	1932-II of 14.10.2016

1.	Names of the complainant/ victims(s)/ aggrieved persons(s)	HDFC Bank
2.	Dates on which the statement(s) of the complainant/ victims(s)/ aggrieved persons(s) were recorded	01.02.2023
3.	**Has the identity of the complainant/ victims(s)/ aggrieved persons(s) been verified?**	Yes
4.	**Whether all the victims/ all the aggrieved persons have compromised the matter?**	Yes
5.	**Is there pressure, threat, or coercion upon the victim(s)/aggrieved person(s)/complainant?**	No
6.	**Names of the accused person(s)**	Sushil Kumar son of Rai Singh r/o VPO Mahrana, Tehsil Bhadra, District Hanumangarh
7.	**Dates on which the statement(s) of the accused persons(s) recorded**	01.02.2023
8.	**Whether all the accused have compromised the matter? If no, then the names of the accused who have compromised.**	Yes
9.	**Whether proclamation proceedings are pending against any accused?**	Yes, accused wad declared PO vide order dated 04.03.2020 and thereafter an FIR No.74 dated 09.03.2020, PS Adampur, under Section 174-A of IPC was registered against the accused. As per statement of accused the same is pending before the Court of Sh. Abhishek Chaudhary, Ld. JMIC, Hisar and challan has already been filed in the aforesaid FIR and charges have also been framed and case is fixed for prosecution evidence
10.	**Has the police report been filed or not?**	Yes
11.	**Notice of accusation /Charges have been framed or not?**	Yes
12.	**Sections of statutes invoked in the matter**	Section 138 of NI Act
13.	**Whether the court is satisfied with the genuineness of the compromise?**	Yes

4. The jurisprudence behind the Negotiable Instruments Act, 1881 is that the business transactions are to be honoured. The legislative intention is not to make people suffer

incarceration only because their cheques bounced. These proceedings are to recover the cheque amount by showing teeth of a penal clause.

5. Given the judgment passed by Hon'ble Supreme Court of India in Damodar S. Prabhu v Sayed Babalal, (2010) 5 SCC 663, the law is well settled that when the entire money is paid, then the complainant cannot have any objection to such compromise, and 15% of the cheque amount is to be paid by the accused to the concerned State Legal Services Authority.

6. Given above, because of the compromise, this is a fit case where the inherent jurisdiction of the High Court under Section 482 read with 401 of the CrPC supported by Section 147 of the NIA is invoked to disrupt the prosecution and quash the proceedings mentioned above. The complaint, notice of accusation, and the proceedings captioned above are quashed and set aside. The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

7. Ld. counsel submits that in case the 15% compensation amount could not be deposited, then in such a situation, the time to do so may be extended and also prayed that in case it is beyond the financial capacity of the petitioner to pay the 15% amount. It may be dispensed with or reduced after considering the petition's paying capacity, family, and financial liabilities.

8. The amount of cheque in question was Rs. 5,25,000/-, 15% of which comes out to be Rs. 78,750/-. This compounding is subject to the petitioner depositing the amount of Rs. 78,750/- on or before 20.05.2023, with the concerned wing of High Court Legal Aid, failing which this entire order, including compounding, shall automatically stand recalled under Section 362 and Section 482 CrPC, and this petition shall be posted for hearing on merits.

9. In case, after taking into account the family and financial liabilities, it is beyond the petition's financial capacity to pay the 15% amount, then in such a situation, it shall be open for the petitioner to apply to section 482 CrPC by placing on record the bank statements from 01 April 2020 till the date of all bank accounts, all fixed deposits, DEMAT account numbers, the current market value of jewelry, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand. After analyzing the petition's paying capacity, the court shall consider reducing or dispensing with 15% of the amount mentioned earlier.

10. In extraordinary circumstances, the petitioner may approach this Court for an extension of time to deposit the compounding fee. Petitioner to file the proof of deposit before the trial Court within the aforementioned time. Consequently, the above-captioned complaint, notice of accusation, and all consequent proceedings would also stand quashed

qua the petitioners, and the petitioners would also stand acquitted of all the offenses captioned above. All pending applications are closed. On failure to comply with the conditions mentioned above, the petition shall be listed for a final hearing, and the quashing order shall automatically stand recalled without any further reference to this Court.

Petition allowed in the terms mentioned above. All pending applications, if any, stand closed.

(ANOOP CHITKARA)
JUDGE

20.03.2023
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Whether speaking/reasoned: Yes
Whether reportable: **No**.