

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

275

CRR-831-2023 (O&M)

Date of Decision: 31.08.2023

VIKRANT

... Petitioner

Versus

SITA RAM

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Karandeep Singh, Advocate
for the petitioner/accused.

Mr. Mandeep Singh, Advocate
for the respondent/complainant.

HARNARESH SINGH GILL, J.(Oral)

In a complaint filed under Section 138 of the Negotiable Instruments Act, 1881, by the respondent, vide judgment of conviction and order of sentence dated 30.04.2019 passed by the learned Judicial Magistrate, 1st Class, Abohar, the petitioner was convicted under the aforesaid Section and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.5,000/- , along with default clause.

2. Feeling aggrieved against the aforesaid judgment of conviction, the petitioner preferred an appeal before the learned Sessions Judge, Fazilka, which was dismissed vide order dated 15.10.2019.

3. Still aggrieved, the petitioner has preferred the present revision petition against the aforesaid judgments and order.

4. Learned counsel for the petitioner submits that, though, the

cheque amount was of Rs.1,30,000/-, yet the fact remains that a compromise dated 22.03.2023 has been effected between the parties for a sum of Rs.95,000/-, which has already been paid by the petitioner to the respondent. He further submits that vide order dated 28.03.2023 passed by a Coordinate Bench of this Court, the petitioner was directed to deposit 15% of the cheque amount with the High Court Legal Services Authority, in view of the judgment passed by the Hon'ble Supreme Court in Damador S. Prabhu vs. Sayed Babalal, 2010 (5) SCC 663, which the petitioner has already deposited. He, thus, argues that offence may be compounded.

5. Learned counsel for the respondent does not dispute the factum of compromise effected between the parties and the fact that the petitioner has already paid the settled amount to the respondent. He further submits that he has no objection, if the offence is compounded and the petitioner is acquitted of the notice of accusation while setting aside the impugned judgments and order passed by the Courts below.

6. I have heard the learned counsel for the parties.

7. Indisputably, the matter has now been settled between the parties and as per the said settlement, the petitioner has paid the sum of Rs.95,000/- to the respondent, though the cheque amount was of Rs.1,30,000/-. Further, in compliance of the order dated 28.03.2023 passed by a Coordinate Bench of this Court, the petitioner has deposited 15% of the cheque amount in view of the judgment delivered by the Hon'ble Apex Court in Damodar S. Prabhu's case (supra), as would decipher from the report of the Registry dated 17.07.2023.

8. The Hon'ble Supreme Court in Damodar S. Prabhu's case (supra), has held as under:-

'15. With regard to the progression of litigation in cheque bouncing cases, the learned Attorney General has urged this Court to frame guidelines for a graded scheme of imposing costs on parties who unduly delay compounding of the offence. It was submitted that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases for years. An application for compounding made after several years not only results in the system being burdened but the complainant is also deprived of effective justice. In view of this submission, we direct that the following guidelines be followed:-

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.

Let it also be clarified that any costs imposed in accordance with these guidelines should be deposited with the Legal Services Authority operating at the level of the Court before which compounding takes place. For instance, in case of compounding during the pendency of proceedings before a Magistrate's Court or a Court of Sessions, such costs should be deposited with the District Legal Services Authority. Likewise, costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with composition before the Supreme Court should be deposited with the National Legal Services Authority.

16. We are also in agreement with the Learned Attorney General's suggestions for controlling the filing of multiple complaints that are relatable to the same transaction. It was submitted that complaints are being increasingly filed in multiple jurisdictions in a vexatious manner which causes tremendous harassment and prejudice to the drawers of the cheque. For instance, in the same transaction pertaining to a loan taken on an installment basis to be repaid in equated monthly installments, several cheques are taken which are dated for each monthly installment and upon the dishonor of

each of such cheques, different complaints are being filed in different courts which may also have jurisdiction in relation to the complaint. In light of this submission, we direct that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under [Section 200](#) of the CrPC. If it is found that such multiple complaints have been filed, orders for transfer of the complaint to the first court should be given, generally speaking, by the High Court after imposing heavy costs on the complainant for resorting to such a practice. These directions should be given effect prospectively.

17. We are also conscious of the view that the judicial endorsement of the above quoted guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that [Section 147](#) of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under [Section 320](#) of the CrPC cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving [Section 138](#) of the Act. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the Court is spent on the trial of these cases and the parties are not liable to pay any Court fee since the proceedings are governed by [the Code](#) of Criminal Procedure, even

though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end. Even in the past, this Court has used its power to do complete justice under [Article 142](#) of the Constitution to frame guidelines in relation to subject-matter where there was a legislative vacuum.

9. Keeping in view the law laid down by the Hon'ble Supreme Court coupled with the factum of settlement between the parties, the compounding of offence is allowed and as a necessary consequence thereof, the judgments and order passed by the Courts below are set aside; the petitioner is acquitted of the notice of accusation served upon him and the complaint filed by the complainant is dismissed. The petitioner shall be released forthwith, if not required in any other case.

Disposed of in the above terms.

31.08.2023

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No