

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

**CRR No.1007 of 2022 (O&M)
Date of Decision: 28.11.2023**

Thana Singh

...Petitioner

vs.

M/s Bhushan Trading Company

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. B.S.Bhalla, Advocate
for the petitioner.

Mr. Khushkaran K. Goyal, Advocate
for the respondent.

N.S.Shekhawat J. (Oral)

1. The petitioner had filed the present revision petition against the impugned judgment and order dated 25.10.2021, passed by the Court of Sub-Divisional Judicial Magistrate, Baghapurana, District Moga, whereby, the petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'Act') and was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/-, alongwith default stipulation and also against the impugned judgment dated 05.05.2022 passed by the Court of Additional Sessions Judge, Moga, whereby the appeal filed by the present petitioner was ordered to be dismissed.

2. As per the case of the respondent/complainant, the petitioner/accused was an agriculturist and used to sell his crop through the

respondent/complainant firm and used to take loan. An amount of Rs.6,29,338/- was due towards the petitioner/accused. Ultimately, in discharge of his legal liability, the petitioner/accused had issued a cheque bearing No.097921 on 23.09.2017 for Rs.6,29,338/- in favour of the respondent/complainant. However, when the cheque was presented with the Banker by the respondent/complainant, it was returned back dishonoured with the remark "Insufficient Funds" vide memo dated 16.11.2017. The respondent/complainant served a registered legal notice upon the accused/petitioner on 14.12.2017, but the petitioner/accused did not return the amount and the respondent/complainant was constrained to file a criminal complaint under Section 138 of the Negotiable Instruments Act against the present petitioner.

3. During the pendency of the petition, the petitioner/accused has filed an application under Section 320 of the Cr.P.C. read with Section 147 of the Negotiable Instruments Act for seeking permission to compound the offence.

4. As per learned counsel for the petitioner/accused, the parties have compromised the matter and the petitioner had deposited the cheque amount of Rs. 6,29,338/- with the Registry of this Court, which has been disbursed to the respondent/complainant. Besides this, the petitioner had already paid 20% of the cheque amount to the respondent/complainant before the Trial Court. Consequently, a prayer was made to permit the petitioner/accused to compound the offences.

5. A short reply has been filed by way of an affidavit of Hari Bhushan son of Darshan Kumar, respondent/complainant and he has admitted the factum

of compromise and stated that the parties had resolved all their disputes.

6. Learned counsel appearing on behalf of the respondent/complainant submits that he has no objection, in case the petitioner/accused is ordered to be acquitted, on the basis of the compromise between the parties.

7. I have heard the learned counsel for the parties and with their able assistance, I have gone through the record carefully.

8. The Hon'ble Supreme Court has held in the matter of **Damodar S. Prabhu Vs. Sayed Babalal H., AIR 2010 (SC) 1907: 2010(2) RCR (Criminal 851)** as follows:-

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 Cr.P.C. 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 Cr.P.C. 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. So far as 15% of the cheque amount in terms of ratio of ***Damodar S. Prabhu's case (supra)*** is concerned, I am of the view that Section 147 of the Negotiable Instruments Act does not contain any guideline or procedure for proceeding with the compounding of the offences. Since scheme under Section 320 Cr.P.C cannot be followed in stricto sensu, therefore, Hon'ble Apex Court has also clarified that in order to discourage chronic litigants from delaying the composition of the offence under Section 138 of the Act, the scheme for imposing costs is considered to be a valid means to encourage compounding at the earliest. Valuable time of the Court is also involved in the trial of the cases and the parties are not liable to pay any Court fee in such proceedings, even though the impact of the offence is largely confined to the private parties. The imposition of costs would be a matter of discretion of the Court.

10. In view of the fact that the parties have resolved their differences and have compromised the matter and also the fact that the petitioner is a poor person, I am of the view that 15% of the cheque amount towards cost(s) of litigation can be waived off in the interest of justice.

11. In view of the above discussion, the petition is allowed and the

impugned judgments/order(s) are set aside and the parties are allowed to compound the offence in terms of Section 147 of the Act and petitioner is ordered to be acquitted of the charge.

12. All other pending applications, if any, are also disposed off, accordingly.

28.11.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No