

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

241

CRR 997 of 2020 (O&M)
Date of Decision: 16.08.2023

Kanchan Rani

...Petitioner

Vs.

Neelam Rani and another

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ramnish Puri, Advocate
for the petitioner.

Mr. Raman Kumar, Advocate
for respondent No. 1.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The present revision petition has been preferred against the impugned judgement dated 03.03.2020 passed by the Court of Sessions Judge, Amritsar, whereby, the judgment of conviction and order of sentence dated 06.02.2019 passed by the Court of Sub Divisional Judicial Magistrate, Baba Bakala Sahib were ordered to be upheld and the appeal filed by the present petitioner was ordered to be dismissed.

2. As per the case set up by respondent No. 1/complainant, the present petitioner had taken a loan of Rs. 3 lacs from respondent No. 1 and in discharge of her legal liability/debt towards respondent No. 1, the petitioner issued one cheque bearing No. 631555 dated

05.07.2014 for a sum of Rs. 3,00,000/- from her account No.3505000100623717, maintained with Branch Warraich Amritsar. While issuing the said cheque, the petitioner had assured the respondent No. 1 that the cheque would be encashed on presentation to her banker, however, when the cheque was presented by respondent No. 1, it was returned with the remarks “funds insufficient” vide memo dated 10.09.2014 issued by the bank of the petitioner. After dishonour, the respondent No.1 got legal notice issued through her counsel on 23.09.2014 and the same was addressed to the present petitioner. However, in spite of service of legal notice, the petitioner did not make the payment of the cheque in question to the respondent No. 1 and the respondent No. 1 initiated the criminal prosecution of the petitioner by presenting a complaint under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter to be referred as '**the Act**').

3. After holding the trial, vide impugned judgment and order dated 06.02.2019 the Sub-Divisional Judicial Magistrate, Baba Bakala, District Amritsar, convicted the petitioner for the offence punishable under Section 138 of the Act and the petitioner was sentenced to undergo one year and to pay a fine of Rs. 5000/- alongwith default stipulation. Even, vide the impugned judgment dated 03.03.2020 passed by the Court of Sessions Judge, Amritsar, the appeal filed by the present petitioner was ordered to be dismissed. During the pendency of the present revision petition, the petitioner

has moved an application under Section 147 of the Act read with Section 482 Cr.P.C. seeking permission of this Court to compound the offence punishable under Section 138 of the Act. Learned counsel for the petitioner contends that during the pendency of the revision petition, the parties have executed a compromise deed dated 19.03.2021 (Annexure A-1) and the respondent has also sworn an affidavit (Annexure A-2) to the effect that she did not wish to pursue the case further and she had no objection, in case, the petitioner was ordered to be acquitted in the present case on the basis of the compromise. Consequently, it was prayed that the parties may be allowed to compound the offence and the petitioner may be ordered to be acquitted by this Court.

4. A short reply has been filed by the respondent, admitting the factum of compromise. As per the said reply filed by respondent No. 1, the respondent No. 1 has no objection if the offence is ordered to be compounded by this Court and the petitioner is ordered to be acquitted on the basis of the compromise. During the course of hearing, the learned State counsel has filed a custody certificate and as per the custody certificate, the petitioner has already undergone 04 months and 06 days of actual custody out of total sentence of one year imposed by the trial Court.

5. Learned counsel for the petitioner by relying upon **Cochin Hotels Co.(P) Ltd. and others Vs. Kairali Granites and others, 2006(2) RCR (Criminal) 333 and K. Subramanian Vs. R.**

Rajathi represented by POAP Kaliappan, 2010 (1) RCR

(Criminal) 184 contended that even after finalization of judgment of conviction and order of sentence, petitioner can resort to compounding mechanism in terms of Section 147 of Negotiable Instruments Act as the offence related to dishonouring of cheque is having compensatory profile and it should be given precedence over punitive mechanism. Offence is almost a civil wrong which has been clothed in a criminal overtone, therefore, the priority should be given to compensatory mechanism

6. Learned counsel also relied upon Damodar S. Prabhu vs. Sayed Babalal H.(supra) Kaushalya Devi Massand vs. Roopkishore, 2011(2) RCR (Criminal) 298 and contended that the compromise in question would definitely go in long way to strengthen the mutual relationship between the parties and would serve as an ever lasting tool in their favour. This exercise would be in consonance with the spirit of Section 147 of the Negotiable Instruments Act as endorsed in Damodar S. Prabhu's case (supra)

7. For the reasons recorded hereinabove, I deem it appropriate to dispose of the present revision petition in terms of compromise consequently the impugned orders are set aside.

8 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.

9. 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 fruit vendor and has two daughters, 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.

10. In view of the above discussion, 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.

11. All pending applications, if any, are disposed off, accordingly.

16.08.2023**(N.S.SHEKHAWAT)**

amit rana

JUDGE

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