

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

264

CRR-1139-2023 (O&M)

Date of Decision:20.11.2023

Harvinder Singh

...Petitioner

Vs.

Gagandeep Singh Chawla

...Respondent

Coram : Hon'ble Mr. Justice N.S.ShekhawatPresent: Mr. Deepak Girotra, Advocate
for the applicant-petitioner.Ms. Brea Sandhu, Advocate
for respondent No. 2.

N.S.Shekhawat J.

1. The present revision petition has been preferred against the judgement dated 20.04.2023 passed by the first appellate Court and the judgment and order dated 17.05.2019 passed by the trial Court, whereby, the petitioner was ordered to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and was sentenced to undergo simple imprisonment for a period of six months and to pay compensation to the complainant of amount equivalent to the cheque amount, i.e. Rs. 2,00,000/- within a period of one month of expiry of period of prescribed for appeal.

2. The petitioner has also filed one application, i.e., CRM 19534 of 2023 under Section 147 of the Act read with Section 482 Cr.P.C., with a prayer to compound the offence in the present case.

3. It has been stated in the application that the

applicant/petitioner and the respondent had resolved all their disputes and a compromise deed dated 26.04.2023 (Annexure A-1) was entered into between the parties.

4. Learned counsel for the petitioner contends that after the conviction by the first appellate Court, the petitioner had entered into a compromise with the respondent on 26.04.2023 and a compromise dated 26.04.2023 (Annexure A-1) was signed by the parties in this regard. As per the said compromise, the petitioner had agreed to pay a sum of Rs. 4,50,000/- lacs through his cousin Davinder Singh to the respondent. Even, Davinder Singh, cousin of the petitioner had handed over a demand draft of Rs. 4.50 lacs to the respondent and the respondent had agreed to help the petitioner in compounding the offence in the present case.

5. During the pendency of the present petition before this Court, Ms. Brea Sandhu, Advocate, has appeared on behalf of the respondent and placed on record a short reply by way of affidavit of the respondent, which is taken on record. Even, learned counsel appearing on behalf of the respondent has admitted that vide compromise dated 26.04.2023 (Annexure A-1), the respondent has compromised the matter with the petitioner.

6. Learned counsel for the respondent submits that the respondent/complainant had received a total sum of Rs.4,50,000/- from the petitioner/accused towards full and final settlement of his claim arising out of cheque in question and nothing remained payable by the petitioner to the respondent and he had no objection in case

the offence is ordered to be compounded by this Court and the petitioner is ordered to be acquitted.

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 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. It is not in dispute that the respondent had initiated the criminal prosecution of the petitioner on the ground that a cheque of an amount of Rs.2 lacs issued by the petitioner stood dishonoured.

Now from the settlement deed dated 26.04.2023 Annexure A-1, it is apparent that a sum of Rs.4,50,000/- lacs has been paid by the petitioner to the respondent and the learned counsel for the respondent has also made a statement that the offence may be ordered to be compounded and she has no objection in case, the petitioner is ordered to be acquitted on the basis of the compromise between the parties. Consequently, by invoking the powers of this Court under Section 147 of the Negotiable Instruments Act read with Section 482 Cr.PC, the parties are allowed to compound the offences and the petitioner is ordered to be acquitted of notice of accusation.

10. The impugned judgment and order dated 17.05.2019 passed by the Court of JMIC, Chandigarh and the judgment dated 20.04.2023 passed by the Court of learned Additional Sessions Judge, Chandigarh are ordered to be set aside.

11. The petitioner is also directed to deposit an amount of Rs.30,000/- which is 15% of the cheque amount, within a period of two months, from today with the Punjab Legal Services Authority. In case, the cost is not deposited with the Punjab State Legal Service Authority within a period of two months from today, the present petition shall be ordered to be dismissed.

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

20.11.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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