

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRR-1335-2023 (O&M)

Date of decision: 24.05.2023

Suresh Kumar

....Petitioner

Versus

Sushil Lohia and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. P.S. Jammu, Advocate for the petitioner

Ms. Ridhi Bansal, Advocate for respondent No.1

Mr. Jagdish Manchanda, Additional AG Haryana

AMAN CHAUDHARY. J.

1. The challenge in the present criminal revision is to the order dated 01.05.2023 passed by learned Additional Sessions Judge, Sirsa, dismissing the appeal preferred against the judgment of conviction and order of sentence dated 16/18.08.2018 passed by learned Chief Judicial Magistrate, Sirsa vide which the petitioner was sentenced to undergo rigorous imprisonment for a period of one year under Section 138 of the Negotiable Instrument Act and also directed to pay compensation to the tune of Rs.1,80,000.

2. Learned counsel for the petitioner, at the outset submits during the pendency of the present revision that a settlement has been arrived at between the parties and an affidavit dated 14.05.2023 of the respondent No.1 has been placed on record, as Annexure P-1, original of which is taken on record as Mark-A, stating therein that there is no outstanding amount and that has been compensated

in total. Further, in pursuance of order dated 22.05.2023, petitioner has deposited 15% of the cheque amount in terms of the judgment of **Damodar S. Prabhu vs. Sayed Babalal H.**, (2010) 5 SCC 663. A receipt in this regard is taken on record as Mark B. He prays that the offence may be compounded, in view of the said settlement.

3. Ms. Ridhi Bansal, Advocate appears on behalf of respondent No.1 and affirms the aforesaid factum of having received the cheque amount and on instructions from the complainant submits that she has no objection, in case the offence is compounded.

4. Heard.

5. It is apposite to make a reference to the compromise, Annexure P-1, which reads thus,

“I, Sushil Lohiya S/o Sri Kishan Lohiya Resident of Lohiya Bhawan Boarding School Street, Suratgarhia Market Sirsa ,District Sirsa and State as mentioned below.

1. That I am permanent resident of the above said Address.

2. That I had filed a case no. NT 343/2014 under Section 138 NI Act titled as Sushil Kumar vs Suresh Kumar in Hon'ble court of Sirsa, in which the above mentioned Suresh Kumar was Convicted. That against this Order Suresh Kumar had filed an appeal before Hon'ble court of Session Judge, Sirsa bearing CRA 399 of 2018 Titled Suresh Kumar vs Sushil Lohiya. That on Dated 01-05-2023 While deciding the Appeal the court of Additional Session Judge, Sirsa had upheld the Conviction of Suresh Kumar.

3. That now the Deponent has entered into an compromise with accused Suresh Kumar and has been compensated. As deponent been given back his Cheque amount of Rs 1,80,000 /- by the family of Suresh Kumar as Suresh Kumar is confined in District Jail, Sirsa.

4. That regarding the above said Cheque I have no outstanding dues with Suresh Kumar and I have been compensated in total.

5. That the Hon'ble Court of Punjab And Haryana high court grants Concession of Bail or Acquitted in the above said Appeal to Suresh Kumar then I have no Objection.”

6. Hon'ble The Supreme Court in the case of **K.Subramanian vs. R. Rajathi** (2010) 15 SCC 352 interpreted the provisions of NI Act with Section 320 Cr.P.C., and held thus:

“6. Having regard to the statutory provisions of Section 147 of Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.

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8. The CRL.M.P. No.12804 of 2009 in which the prayer is made by petitioner to permit him to produce affidavits sworn by him on December 1, 2008 as well as affidavit sworn by P. Kaliappan power of attorney holder of R. Rajathi on December 1, 2008, as additional documents is allowed. CRL. M.P. No.12803 of 2009 in which the petitioner has prayed to permit him to compound the offence and acquit him by setting aside the conviction recorded in Criminal case No. 726/2003 under Section 138 of the Negotiable Instruments Act by Learned Judicial Magistrate, Karur is allowed. The petitioner is permitted to compound the offence. The Order of conviction and sentence recorded by all the Courts are hereby set aside and petitioner is acquitted of the charge leveled against him. All the applications including Review Petition accordingly stand disposed of as also SLP (Crl.) No.6974 of 2008 @ CRL.M.P. No.14586 of 2008 in terms of this Order.”

7. The compounding of the offence at later stages of litigation, in cases under Section 138 of NI Act, is permissible as per the ratio laid down by Hon'ble The Supreme Court in the case of **K.M. Ibrahim vs. K.P. Mohammed**, (2010) 1 SCC 798 which reads thus,

"11. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences.

12. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even

at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution."

8. Hon'ble The Supreme Court in **Damodar S. Prabhu** (supra) has laid down the guidelines to be followed by the Courts when exercising power to set aside the judgment of conviction against the petitioner on the basis of a valid compromise. The said guidelines as read thus:

“(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.”

9. The judgment of conviction/order of sentence recorded by the trial Court and affirmed by the the Appellate Court are being hereby set aside and petitioner is acquitted of the charges, considering the facts and circumstances of the case, in light of the afore-referred judgments as well as the the fact that the matter has since been compromised, particularly that the petitioner has deposited

15% of the amount as per the guidelines issued by Hon’ble The Supreme Court in **Damodar S. Prabhu** (supra). The respondent has affirmed the said factum and also received the amount in terms thereof as well as gave his no objection to the petition being disposed of.

10. Needless to say that the parties shall remain bound by the terms and conditions of the settlement/agreement.

11. Disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

24.05.2023
S.Sharma(syr)

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