

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-4779-2017 (O&M)
Reserved on: 08.02.2023
Date of Pronouncement: 11.04.2023

Anil Kumar
...Petitioner (s)
Versus
Ompati and another
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- None.

ANOOP CHITKARA, J.

Criminal Complaint	No.216 of 2013 under Section 138 of the Negotiable Instruments Act, District Mohindergarh decided on 4.2.2015
Criminal Appeal	No. 4 of 5.3.2015 before Addl. Sessions Judge, District Narnaul decided on 4.12.2017

1. The petitioner, who stands convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (NIA) has come up before this Court under Section 401, Code of Criminal Procedure, (CrPC).
2. Vide order dated 17.1.2018, at the request of the parties, the matter was referred to the Mediation and Conciliation Centre of this Court and parties were directed to appear before it.
3. As per report of the Mediation and Conciliation Centre dated 23.3.2018, the parties settled their dispute and a settlement agreement was signed between the parties, whereby a total sum of Rs.2,70,000/- was paid to respondent no.1-complainant.
4. Thereafter, vide order dated 27.3.2019, this Court the petitioner was directed to deposit 15% of the cheque amount with the Welfare Centre for Persons with Speech and Hearing Impairment, Chandan Nagar, Gurugram, but on 10.10.2022,

counsel for the petitioner sought time to place on record the judicial precedents to the effect that when the matter is settled before the Mediation, then there is no need to deposit 15% of the cheque amount in terms of judgment of Damodar S. Prabhu v Sayed Babalal, (2017) 5 SCC 663. But thereafter, none appeared for the petitioner.

5. The jurisprudence behind the Negotiable Instruments Act, 1881 is that the business transactions are to be honoured. The legislative intention is not to make people suffer incarceration only because their cheques bounced. These proceedings are to recover the cheque amount by showing teeth of a penal clause.

6. Given the judgment passed by Hon'ble Supreme Court of India in Damodar S. Prabhu v Sayed Babalal, (*supra*), the law is well settled that when the entire money is paid, then the complainant cannot have any objection to such compromise, and 15% of the cheque amount is to be paid by the accused to the concerned State Legal Services Authority.

7. In Damodar S. Prabhu v Sayed Babalal, (*supra*), Hon'ble Supreme Court holds,

[17]. "...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."

8. Given above, because of the compromise, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the CrPC supported by Section 147 of the NIA is invoked to disrupt the prosecution and quash the proceedings mentioned above.

9. The cheque amount in question is two lakh and thirty thousand (Rs.2,30,000). 15% of Rs.2,30,000/- comes to be Rs.34,500/-. This compounding is subject to the petitioner depositing the 15% of the cheque amount i.e. Rs.34,500/-, on or before 15.05.2023, with the concerned wing of High Court Legal Aid, failing which this entire order, including compounding, shall automatically stand recalled under Section 362 and Section 482 CrPC, and this petition shall be posted for hearing on merits. However, in extraordinary circumstances, the petitioner may approach this Court for an extension of time to deposit the compounding fee. Petitioner to file the

proof of deposit before the trial Court within the aforesaid time.

10. In case, after taking into account the family and financial liabilities, it is beyond the petitioner's financial capacity to pay the 15% amount, then in such a situation, it shall be open for the petitioner to apply to section 482 CrPC by placing on record the bank statements from 01 April 2020 till the date of all bank accounts, all fixed deposits, DEMAT account numbers, the current market value of jewellery, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand. After analyzing the petition's paying capacity, the court shall consider reducing or dispensing with 15% of the amount mentioned earlier.

11. Given above, the present revision petition is allowed. Consequently, the above-captioned judgment of conviction and order of sentence and all consequent proceedings are set aside *qua* the petitioner(s), and the petitioner would also stand acquitted of all the offences captioned above. All pending applications are closed.

Petition allowed in the terms mentioned above. All pending application(s), if any, stand closed. Registry to communicate this order to the petitioner’s counsel as well as the trial Court without any delay.

(ANOOP CHITKARA)
JUDGE

April 11, 2023
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.