

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-3170-2018
Reserved on 15.02.2023
Pronounced on: 27.04.2023

Suraj ParkashPetitioner

Vs.

Hari Chand and anotherRespondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Neelam Choudhary, Advocate for the petitioner(s).

Mr. Jasbir Mor, Advocate for respondent No.1.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA J.

Criminal Complaint	No. 136-2 of 2012, under Section 138 of the Negotiable Instruments Act, Date of decision: 20.12.2016
Criminal Appeal	No. 11 of 2017, decided by Addl. Sessions Judge, District Jind CNR No.HRJN010002612017 Date of decision: 10.05.2018

1. The petitioner, who stands convicted by the trial court as well as the Sessions court, 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) for setting aside of judgment of conviction affirmed by appellate Court.
2. The petitioner faced criminal prosecution by the private respondent because of the dishonor of the cheque in question. Thus, the opposition of the State’s counsel to this compromise is formal.
3. During the pendency of the petition in the court, the parties had asked for mediation. On their request, a co-ordinate bench of this court had referred the matter to the mediation. As per the mediator's report the parties had entered a settlement vide a memorandum dated 5-7-2019 (in connected petition CRR-3161-2018) and have settled their disputes. After that this court had asked the parties to get their statements recorded before the trial court. On

24-1-2023, the complainant appeared before the JMJC Jind and stated that he has received the settled amount and does not want to continue with the complaint any further. Vide the trial court's report dated 9-2-2023, the parties stated before it that they have settled their disputes and there is no amount due to the complainant from the side of the accused/convict/petitioner.

4. 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. Now, as per the above-mentioned report, the parties have settled their disputes and have compromised the matter.

5. It would be relevant to refer to the judicial precedents wherein based on the compromise, the convictions were set aside:

a). In Ram Prasad and Another v. State of Uttar Pradesh, Cr.A Nos. 308-309 of 1980, decided on April 21, 1980, Hon'ble Supreme Court converted the conviction from 307 IPC to 324 IPC and after that based on compromise, accepted the compounding of offence under section 324 IPC and acquitted the appellants.

b). In Ramji Lal v. State of Haryana, (1983) 1 SCC 368, Hon'ble Supreme Court, in a matter arising against the conviction under section 325 IPC, held,

[5]. All the offences for which the appellants are convicted are compoundable and the compromise can be entered into with the permission of the court. Looking to the chastened attitude of the accused and the commendable attitude of the injured complainant, in order to restore harmony in the society, we accept the compromise. We grant permission to enter into the compromise and accept the same. We accordingly allow the appeal and set aside the conviction and sentence imposed on both the appellants. If they are on bail, their bail-bonds will be cancelled. If they are in jail, they will be released from the jail forthwith.

c). In Mohd. Rafi v. State of U.P., 1998(2) R.C.R.(Criminal) 455, Supreme Court, the convict had gone to Hon'ble Supreme Court against his conviction by the trial Court under Sections 323 and 325 of IPC, which was upheld by Sessions and High Court. After that, the convict and the victim entered into an out-of-court compromise. Hon'ble Supreme Court analyzed the parties' affidavits filed in support of the compromise and observed that parties had willingly and voluntarily settled the matter. To maintain good relations, Hon'ble Supreme Court granted permission to them to compound the said offenses and order the acquittal.

d). In Parameswari v. Vennila, (2000) 10 SCC 348, the appellants before Hon'ble Supreme

Court had been convicted under Section 494 read with Section 109 of IPC. After that, they arrived at a settlement with the complainant, in the presence of panchayatdars of their village, and placed on record the duly signed compromise, and parties filed a joint application for permission to compound the offences. While observing that the offence involved was compoundable with the wife's consent and permission of the Court, Hon'ble Supreme Court granted permission to compound the offence, and resultantly the appellants stood acquitted of the offence for which they have been held guilty.

e). In M.D. Balal Mian v. State of Bihar, 2001 AIR (SCW) 5190, out of three convicts, one was convicted under Section 376 IPC, and the other two were convicted only under Sections 325 & 323 of IPC. After the High Court confirmed the conviction and sentence, all three convicts approached Hon'ble Supreme Court. Although Hon'ble Supreme Court did not find any scope for granting special leave by the convict challenging his conviction under section 376 IPC, however, granted the other permission to the other two convicts to compound the offences under Section 320 (8) of the Criminal Procedure Code and acquitted both of them.

f). In Vuyyuru Ramachandra Rao v. State of Andhra Pradesh, 2001 AIR (SCW) 2396, the appellant had approached the Hon'ble Supreme Court against upholding the conviction under section 354 IPC. The victim of molestation came to terms with the convict and applied to compound the offence. Hon'ble Supreme Court allowed such application for compounding and resultantly acquitted the appellant under Section 320 (8) of the Criminal Procedure Code.

g). In Ramachandra Singh v. State of Bihar, 2003(10) SCC 234, Hon'ble Supreme Court holds,

[5]. We have heard learned counsel for the appellants and the state and taken into consideration the fact and circumstances of the case. In view of the compromise it appears that grievance, if any, of the complainant Kamlesh Kumari Devi is over. Indeed in view of the compromise the accused appellants stand acquitted of the offence under Section 323 Indian Penal Code. In such circumstances the sentence passed by the trial Court and maintained by the High Court deserves to be modified so far as offence under Section 498A Indian Penal Code is concerned.

[6]. The appeal is partly allowed. The conviction of appellant Nos. 1 and 2 under Section 498A Indian Penal Code is maintained, but the sentence of imprisonment passed on them for offence under Section 498-A is reduced to the period already undergone. In so far as appellant No. 3 is concerned, in our opinion, it will meet the ends of justice if he is dealt with under Section 4 of the Probation of Offenders Act, 1958, and released on probation of good conduct. The sentence of imprisonment passed on appellant No. 3 is set aside and it is directed that he shall be released on his entering into a bond with one surety in an amount of Rs. 5000/- to appear before

the trial Court and receive sentence on being called upon during a period of one year and in the meantime to keep the peace and be of good behaviour.

h). In *K. Kandasamy v. K.P.M.V.P. Chandrasekaran*, (2005) 4 SCC 349, based on the compromise, Hon'ble Supreme Court acquitted the appellants/convicts of the offence under Section 500 Indian Penal Code.

i). In *Khursheed and others v. State of U.P.*, Appeal (crl.) 1302 of 2007, decided on 28-9-2007, the appellants were convicted by Trial Court under sections 325, 323 read with 34 IPC. Their appeal against conviction was dismissed by the Sessions Court and revision petition was also dismissed by High Court. The convicts approached the Apex Court and Hon'ble Supreme Court held,

[12]. An offence of causing grievous hurt punishable under Section 325 IPC is covered by sub-section (2) of Section 320 of the Code. It is thus clear that an offence punishable under Section 325 IPC is also compounded with the permission of the Court.

[13]. The parties have compounded the offences. As stated in the compromise deed, Gurfan Ahmad, complainant and his mother Kulsoom @ Bhoori (injured) did not want any action against the appellants (accused). The parties are neighbours, their houses are situated adjacent to each other and they have been living peacefully for last many years and there is no dispute among them. It is further stated that to continue sweet relationship and harmony, complainant side does not want to take any action against the accused. A prayer is, therefore, made to accept the compromise.

[14]. On the facts and in the circumstances of the case, and considering the Deed of Compromise and having heard learned counsel for the parties, in our opinion, ends of justice would be met if we grant necessary permission for compounding an offence punishable under Section 325 read with Section 34 IPC as required by sub-section (2) of Section 320 of the Code. The offence punishable under Section 323 IPC has already been compounded by the parties.

[15]. Sub-section (8) of Section 320 states that the compounding of offence under the section shall have an effect of acquittal of the accused with whom the offence has been compounded. The resultant effect of compounding of offences would be that the accused should be acquitted. In other words, once the offences have been compounded and the requisite permission is granted by the Court, the accused must be acquitted.

j). In *Dr. Arvind Barsaul etc. v. State of Madhya Pradesh*, (2008) 5 SCC 794, after the conviction under section 498-A IPC, the victim wife and the convict husband had compromised their disputes and sought setting aside of conviction based on the compromise. Hon'ble Supreme Court holds as follows,

[10]. We have heard learned counsel for the parties at length. The parties

have compromised and the complainant Smt. Sadhna Madnawat categorically submitted that she does not want to prosecute the appellants. Even otherwise also, in the peculiar facts and circumstances of the case and in the interest of justice, in our opinion, continuation of criminal proceedings would be an abuse of the process of law. We, in exercise of our power under Article 142 of the Constitution, deem it proper to quash the criminal proceedings pending against the appellants emanating from the FIR lodged under section 498A Indian Penal Code. The appeal is accordingly disposed of.

k). In Manoj & Anr. v. State of Madhya Pradesh, Cr. A No. 1530 of 2008, Hon'ble Supreme Court, based on compromise, accepted the compounding of the offence under section 324 IPC and acquitted the appellants.

l). In Md. Abdul Sufan Laskar v. State of Assam, (2008) 9 SCC 333, based on a compromise, Hon'ble Supreme Court set aside the conviction and sentence under section 324 IPC. Hon'ble Supreme Court took similar views in Mathura Singh v. State of U.P., 2009(13) SCC 420 and in Gampa Govindu v. State of Andhra Pradesh thr. Public Prosecutor, 2008(sup) Cri. L.R. 440: Law Finder Doc Id # 521064.

m). In C. Muniappan Vs. State of Tamil Nadu, 2009 13 SCC 790, after the conviction and sentence under section 302 IPC, the deceased's family had compromised the matter with the accused. Rejecting the compromise, Hon'ble Supreme Court observed that once the parties have settled their disputes, they could live in peace, but that cannot be a ground to pass a judgment of acquittal.

n). In Gampa Govindu v. State of Andhra Pradesh, Law Finder Doc Id # 521064; 2008(1) OriLR839, Hon'ble Supreme Court holds,

[3]. The Trial Court convicted the sole appellant under Section 326 of the Indian Penal Code [hereinafter referred to as "I.P.C."] and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rupees one thousand; in default, to undergo further simple imprisonment for a period of one month. On appeal being preferred, the Sessions Court confirmed the conviction and sentence. When the matter was taken to the High Court in revision, the conviction and sentence under Section 326 I.P.C. have been set aside and the appellant has been convicted under Section 324 I.P.C. and sentenced to undergo rigorous imprisonment for a period of one year. Before this Court, a joint petition of compromise has been filed wherein it has been stated that the parties have settled their disputes; as such, they be permitted to compound the offence. In our view, the prayer is just and must be granted. Accordingly, the criminal appeal is allowed and the conviction and sentence awarded against the appellant are set aside, in view of the compounding.

o). In Hirabhai Jhaverbhai v. State of Gujarat, (2010) 6 SCC 688, permitting the parties to compromise the conviction under section 324 IPC, Hon'ble Supreme Court holds, "The

injured complainant and two other injured are permitted to compound the offence punishable under Section 324 Indian Penal Code. In view of sub-section (8) of Section 320 of the Code of Criminal Procedure, the composition of offence under section 324 Indian Penal Code shall have the effect of an acquittal of the appellant with whom the offence has been compounded."

p). In Surat Singh v. State of Uttaranchal (Now Uttarakhand), 2012(12) SCC 772, Hon'ble Supreme Court, based on compromise, permitted the parties to compound their offences under section 354 and 506 IPC.

q). in Jeetu Vs. State of Chhattisgarh, 2013 11 SCC 489 it is the duty of the appellate Court to arrive at its own independent conclusion after examining the material on record. This exercise has however to be conducted after considering the material on record. There is no power conferred by the Code either on the appellate Court/revisonal Court to acquit an accused convicted for a commission of a non-compoundable offence only on the ground that compromise has been entered into between the convict and the informant/complainant.

r). In Dasan v. State of Kerala, (2014) 12 SCC 666, the Hon'ble Supreme Court converted the conviction from 326 IPC to 325 IPC and, based on compromise, accepted the compounding of the offence under section 325 IPC and acquitted the appellant.

s). In Padmalayan v. Sarasan, (2014) 13 SCC 798, Hon'ble Supreme Court permitted post-conviction compromise for offence under section 324 IPC.

t). In Sathiyamoorthy v. State, 2014(3) R.C.R.(Criminal) 867, after observing that after the compromise they have been staying peacefully in the village. It is in the interest of both sides to bury the hatchet and lead a peaceful life, Hon'ble Supreme Court holds,

[6]. Offences under Sections 341 and 325 are compoundable. In view of the settlement they can be permitted to be compounded. However, offences under Sections 148 and 149 of the IPC are not compoundable. Hence, permission to compound them cannot be granted. However, since the accused and the victim have entered into a compromise, we feel that it would be in the interest of both sides to reduce the sentence awarded to the accused under Sections 325 and 341 of the IPC to the sentence already undergone.

[7]. In Ram Lal and anr. v. State of J & K, 2000(1) R.C.R.(Criminal) 92 : (1999)2 SCC 213 the accused were convicted for offence under Section 326 of the IPC, which is non-compoundable. Looking to the fact that the parties had arrived at a settlement and victim had no grievance, this Court reduced the sentence for the offence under Section 326 to sentence already undergone by the appellants-accused. We are inclined to follow similar course.

8. In the result, the appeal is partly allowed. The offences under Sections 341 and 325 of the IPC, for which the appellants are

convicted, are permitted to be compounded because they are compoundable. The appellants are acquitted of the said offences. The appellants are stated to have undergone more than six months imprisonment. So far as offences under Sections 148 and 149 of the IPC are concerned, the conviction of the appellants for the said offences is reduced to the sentence already undergone by them subject to the appellants paying L 30,000/- as compensation to victim-Murugesan. Compensation be paid within three months from the date of this judgment.

u). In Deva Ram v. State of Rajasthan, (2014) 13 SCC 275, the appellant was convicted by Trial Court under section 420 IPC. His appeal against conviction was dismissed by the Sessions Court and revision petition was also dismissed by High Court. The convict approached the Apex Court and Hon'ble Supreme Court held,

[5]. We are informed that out of two years imprisonment the appellant has undergone six months imprisonment. Offence under Section 420 of the IPC is compoundable with the permission of the court by the person who is cheated. Since the parties are related to each other and they have decided to accord a quietus to their disputes and live peacefully, we permit them to compound the offence. Hence, the offence under Section 420 of the IPC for which the appellant was convicted is compounded because it is compoundable with the permission of the court. The appellant is acquitted of the said charge.

v). In Ravinder Kaur v. Anil Kumar, (2015) 8 SCC 286, Hon'ble Supreme Court, in a matter arising out of conviction, permitted the compounding of offence under section 494 IPC.

w). In Shankar Yadav v. State of Chhattisgarh, Cr.A 982 of 2017 Law Finder Doc Id # 877762, Hon'ble Supreme Court while permitting post-conviction compromise, by holding the offence to fall under section 324 IPC, held,

[8]. Having regard to the facts and circumstances of the case, we see no reasons to refuse permission to the parties who have compromised the offences which were compoundable under the Code as it stood in 1998. If it is so, compounding can be permitted and the appellants-accused can be acquitted in view of Section 320 (8) of the Cr.P.C., which expressly enacts that where the composition of an offence under this section is recorded by the court, it shall have effect of an acquittal of the accused with whom the offence has been compounded. We order accordingly.

x). In Sube Singh v. State of Haryana, 2013 (4) RCR (Cri) 102, a Division Bench of this Court holds,

[17]. The magnitude of inherent jurisdiction exercisable by the High Court under Section 482 Criminal Procedure Code with a view to prevent the abuse of law or to secure the ends of justice, however, is wide enough to include its power to quash the proceedings in relation to not only the non-compoundable offences

notwithstanding the bar under Section 320 Criminal Procedure Code but such a power, in our considered view, is exercisable at any stage save that there is no express bar and invoking of such power is fully justified on facts and circumstances of the case.

[21]. In the light of these peculiar facts and circumstances where not only the parties but their close relatives (including daughter and son-in-law of respondent No. 2) have also supported the amicable settlement, we are of the considered view that the negation of the compromise would disharmonize the relationship and cause a permanent rift amongst the family members who are living together as a joint family. Non-acceptance of the compromise would also lead to denial of complete justice which is the very essence of our justice delivery system. Since there is no statutory embargo against invoking of power under Section 482 Criminal Procedure Code after conviction of an accused by the trial Court and during pendency of appeal against such conviction, it appears to be a fit case to invoke the inherent jurisdiction and strike down the proceedings subject to certain safeguards.

6. The present matter relates to an economic offence and the penal teeth are with an end object of recovery of legally enforceable debt or admitted liability.

7. In Shakuntala Sawhney v Kaushalya Sawhney, (1979) 3 SCR 639, at P 642, Hon'ble Supreme Court observed that the finest hour of Justice arises propitiously when parties, who fell apart, bury the hatchet and weave a sense of fellowship or reunion.

8. This Court has inherent powers under Section 482 read with 401 of the Code of Criminal Procedure to interfere in this kind of matter. In the entirety of the case and judicial precedents, I am of the considered opinion that the continuation of these proceedings will not serve any fruitful purpose whatsoever. Given above, because of the compromise, this is a fit case where the inherent jurisdiction of the High Court under Section 482 read with 401 of the CrPC supported by Section 147 of the NIA is invoked to disrupt the prosecution and set aside the judgment of conviction and subsequent proceedings. The judgment of conviction/order of sentence dated 20.12.2016 & 22.12.2016 are set aside.

9. Given the judgment passed by Hon'ble Supreme Court of India in Damodar S. Prabhu v Sayed Babalal, (2010) 5 SCC 663, 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.

10. Ld. counsel submits that in case the 15% compensation amount could not be deposited, then in such a situation, the time to do so may be extended and prayed that in case it is beyond the financial capacity of the petitioner to pay the 15% amount. It may be dispensed

with or reduced after considering the petition's paying capacity, family, and financial liabilities.

11. The amount of cheque in question was Rs. 11,00,000/-, 15% of which comes out to be Rs. 1,65,000/-. This compounding is subject to the petitioner depositing the amount of Rs. 1,65,000/-, on or before 31.08.2023, 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.

12. In case, after taking into account the family and financial liabilities, it is beyond the petition'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 2023 till the date of all bank accounts, all fixed deposits, DEMAT account numbers, the current market value of jewelry, 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.

13. 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 aforementioned time. The bail bonds of the petitioner shall stand accordingly discharged subject the compliance. On failure to comply with the conditions mentioned above, the petition shall be listed for a final hearing, and the quashing order shall automatically stand recalled without any further reference to this Court.

14. Petition allowed in the terms mentioned above. Judgment of conviction and order of sentence dated 20.12.2016 & 22.12.2016 as well as judgment of appellate Court dated 10.05.2018 are set aside. All pending applications, if any, stand closed.

(ANOOP CHITKARA)
JUDGE

27.04.2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No.