109+235 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRR-3599-2018 (O&M)
Date of Decision:07.08.2023

Rajesh Jalota (Mintu) …Petitioner

Vs.

Ashu Kaura …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Sunil Kumar Jain, Advocate
for the petitioner.

Mr. Anubhav Singla, Advocate
for the respondent.

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N.S.Shekhawat J.

1. The present revision petition has been filed before this Court with a prayer to quash the impugned judgment and order dated 28.11.2014 passed by the Court of JMIC, Phagwara, whereby the present petitioner was held guilty for committing the offence punishable under Section 138 of the Negotiable Instruments Act and was sentenced to undergo rigorous imprisonment for a period of 01 year and to pay the compensation amount to the tune of Rs.50,000/- to the complainant and also against the judgment dated 18.09.2018 passed by the Court of learned Additional Sessions Judge, Kapurthala, whereby the appeal filed by the petitioner was ordered to be dismissed.

2. As per respondent/complainant, the petitioner/accused was under a debt of Rs. 2,00,000/- and in order to discharge his liability, the petitioner/accused had issued a cheque bearing No.034670 dated 27.07.2011,for a sum of Rs.2,00,000/- with an assurance that the same would be honoured on presentation by the respondent. The respondent presented the said cheque for

encashment through his bank, but the same was returned by the bankers of the petitioner with the remarks “account closed”. The respondent got a legal notice issued through his counsel on 30.07.2011, which was served upon the petitioner, whereby he was called upon to make the payment of the amount of cheque, within a stipulated period from the date of receipt of the notice. However, the petitioner did not make the payment and the respondent filed a complaint under Section 138 of the Negotiable Instruments Act, before the Trial Court. The petitioner was convicted by the learned Trial Court as well as by the Ist Appellate Court and challenging the correctness and legality of the impugned judgments passed by the Trial Court as well as the Ist Appellate Court, the petitioner had approached this Court by way of filing the present petition under Section 401 Cr.P.C.

3. During the pendency of the petition, the petitioner has filed an application under Section 147 of the Act, for compounding of the offence under Section 138 of the Act. Learned counsel for the petitioner contends that during the pendency of the present petition before this Court, the parties have amicably resolved all their disputes with the intervention of the relatives and respectables of the area and a compromise deed dated 03.04.2023 (Annexure A-1) had been prepared in this regard. Apart from that, the petitioner had paid a total sum of Rs.3.75 lacs to the respondent towards full and final settlement of his claim, arising out of the above mentioned cheque of Rs.2 lacs. It was also agreed between the parties that the petitioner had deposited a sum of Rs. 2 lacs with the Registry of this Court, in compliance of the order dated 18.12.2018 passed by this Court and it was agreed between the parties that the said amount may be returned to the petitioner and the respondent will have no objection to the same.

4. A short reply has been filed by way of affidavit of respondent and the same was taken on record.

5. Learned counsel for the respondent submits that the respondent/complainant had received a total sum of Rs.3,75,000/- (Rs.3,75,000/-only) 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.

6. I have heard the learned counsel for the parties and with their able assistance, I have gone through the record carefully.

7. 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.*

8. 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 03.04.2023 Annexure A-1, it is apparent that a sum of Rs.3.75 lacs have 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 he 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.

9. The impugned judgment and order dated 28.11.2014 passed by the Court of JMIC, Phagwara and the judgment dated 18.09.2018 passed by the Court of learned Additional Sessions Judge, Kapurthala are ordered to be set aside.

10. From the record it is apparent that the petitioner had deposited a sum of Rs.2 lacs with the Registry of this Court in compliance of the order dated 18.12.2018 passed by this Court. The Registry of the Court is directed to return the amount of Rs.2 lacs, lying in the Registry of this Court against proper receipt and identification, to the petitioner.

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.

(N.S.SHEKHAWAT)
JUDGE

07.08.2023
hitesh

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