117+236 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRR-1561-2023 (O&M)
Date of Decision:04.10.2023

Inderjit Singh Brar @ Inderjit Singh (Fauji) …Petitioner

Vs.

Balkaran Singh Mann …Respondent

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

Present: Mr. Lovish Arora, Advocate
for the petitioner.

Mr. Kulbir Singh Rai, Advocate
for the respondent.

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N.S.Shekhawat J.

1. On oral request, made by the learned counsel for the petitioner the main case has been taken up on Board today itself.

2. The present revision petition has been filed before this Court with a prayer to set aside the impugned judgment and order dated 21.10.2022 passed by the Court of Sub Divisional Judicial Magistrate Baghapurana, 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 02 years and to pay a fine of Rs.4000/- along with default stipulation and further to pay Rs.1,10,000/- as compensation to the complainant and also against the judgment dated 13.04.2023 passed by the Court of Additional Sessions Judge, Moga, whereby the appeal filed by the petitioner was ordered to be dismissed.

3. As per complainant/respondent, the petitioner/accused was under a debt of Rs. 1,10,000/- alongwith interest @ 1% per month and in order to discharge his liability, the petitioner/accused issued a cheque bearing No.901011 dated 19.10.2018, for a sum of Rs.1,10,000/- with an assurance that

the same would be honoured on presentation by the complainant/respondent. The respondent/complainant presented the said cheque for encashment through his bank, but the same was returned by the bankers of the petitioner with the remarks "Funds Insufficient". The respondent issued a legal notice on 15.11.2018, which was served upon the petitioner, whereby he was called upon to make the payment of the said amount of cheque, within a period of 15 days. However, the petitioner did not make the payment and the respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act") before the Trial Court.

4. During the pendency of the present revision petition on 18.07.2023, learned counsel for the petitioner contended that the matter had been compromised between the parties and accordingly, an application under Section 147 of the Act was moved by the petitioner for compounding the offence under Section 138 of the "Act". Even a written affidavit/compromise deed dated 25.04.2023, was also placed on record. Even during the course of hearing today, a reply has been filed by way of an affidavit of Balkaran Singh Mann son of Sardara Singh i.e respondent and the same is also taken on record. Even as per the said affidavit/compromise, the respondent/complainant had clearly stated that he had no objection in case the offence in the present case is ordered to be compounded by this Court. Learned counsel for the respondent also submitted that he had received a total sum of Rs.1,10,000/- from the petitioner/accused towards his full and final settlement of the claim arising out of cheque in question and nothing remained payable by the petitioner to the respondent.

5. I have heard the learned counsel for the parties and with their able

assistance, I have gone through the record carefully.

6. 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
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> *(i) In the circumstances, it is proposed as follows:*
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> *(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.*
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> *(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.*

7. In view of the above submissions, it is apparent that the matter has been amicably resolved between the parties and the respondent had received the entire disputed amount of Rs.1,10,000/- and nothing remains due towards the petitioner. Thus, by invoking the powers of this Court under Section 147 of the "Act" read with Section 482 Cr.P.C, the parties are allowed to compound the offence and the petitioner is ordered to be acquitted of the notice of accusation.

8. As a consequence, the impugned judgment and order dated 21.10.2022 passed by the Court of Sub Divisional Judicial Magistrate, Baghapurana and the judgment dated 13.04.2023 passed by the Court of Additional Sessions Judge, Moga are ordered to be set aside.

9. However, in view of the law laid down by the Hon'ble Supreme Court in the matter of ***Damodar's case*** ***(supra),*** the petitioner is directed to deposit an amount of Rs.16,500/-, which is the 15% of the cheque amount by way of costs with the Punjab State Legal Services Authority within a period of two months from today.

10. In case, the petitioner does not deposit the said amount with the Punjab State Legal Services Authority, the present petition shall be deemed to be dismissed.

11. All other pending applications, if any, disposed off, accordingly.

(N.S.SHEKHAWAT)
JUDGE

04.10.2023
hitesh

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