

249 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
 AT CHANDIGARH
 CRR-1709-2023 (O&M)
 Date of Decision:23.08.2023

Naresh Sharma

...Petitioner

Vs.

Suresh Kumar

...Respondent

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

Present: Mr. Rakesh Kumar, Advocate for
 Mr. Ghulam Nabi Malik, Advocate
 for the petitioner.

Mr. Saudagar Singh, Advocate
for the respondent.

N.S.Shekhawat J.

1. The petitioner had filed the present petition against the impugned judgment dated 13.07.2023, passed by the Court of Additional Sessions Judge, Chandigarh and the impugned judgment of conviction and order of sentence dated 24.10.2017, passed by the Court of Judicial Magistrate Ist Class, Chandigarh, whereby the petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act") and was sentenced to undergo rigorous imprisonment for a period of one year and had directed to pay compensation of Rs.7,50,000/- within a period of one month.

2. The petitioner had also filed an application under Section 147 of the "Act" read with Section 482 Cr.P.C for compounding the offence in the present case.

3. Learned counsel for the petitioner contends that the petitioner was convicted by both the Courts and was also ordered to be convicted and was

ordered to be sentenced by the Court of Additional Sessions Judge, Chandigarh and the impugned judgment of conviction and order of sentence dated 24.10.2017, passed by the Court of Judicial Magistrate Ist Class, Chandigarh. However, in the meantime, the parties had entered into a compromise/affidavit, Annexure A-1 and it was apparent that the complainant had been adequately compensated in the present case. Apart from that, both the parties were living peacefully and 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.

4. A short reply by way of an affidavit of the respondent/complainant has been filed in the present case and the same is taken on record. Learned counsel appearing on behalf of respondent submitted that the parties had entered into a compromise and he had no objection in case the present petition is allowed and the offences against the petitioner are ordered to be compounded.

5. I have heard learned counsel for the parties and have carefully stands the record of the present case. It has been held by the Hon'ble Supreme Court in the matter of **Damodar S. Prabhu Vs. Sayed Babalal H., AIR 2010 (SC) 1907: 2010(2) RCR (Criminal 851)** as follows:-

13. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice- delivery. The problem herein is with the tendency of

litigants to belatedly choose compounding as a means to resolve their dispute. Furthermore, the written submissions filed on behalf of the learned Attorney General have stressed on the fact that unlike Section 320 of the Criminal Procedure Code, Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court. As mentioned earlier, the learned Attorney General's submission is that in the absence of statutory guidance, parties are choosing compounding as a method of last resort instead of opting for it as soon as the Magistrates take cognizance of the complaints. One explanation for such behaviour could be that the accused persons are willing to take the chance of progressing through the various stages of litigation and then choose the route of settlement only when no other route remains. While such behaviour may be viewed as rational from the viewpoint of litigants, the hard facts are that the undue delay in opting for compounding contributes to the arrears pending before the courts at various levels. If the accused is willing to settle or compromise by way of compounding of the offence at a later stage of litigation, it is generally indicative of some merit in the complainant's case. In such cases it would be desirable if parties choose compounding during the earlier stages of litigation. If however, the accused has a valid defence such as a mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums.

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.

6. In view of the submissions made by learned counsel for the parties and the law laid down by the Hon'ble Supreme Court in the matter of **Damodar S. Prabhu Vs. Sayed Babalal H. (supra)**, the parties in the present case are permitted to compound the offences in the present case. As a consequence, the impugned judgment dated 13.07.2023 passed by the Court of Additional Sessions Judge, Chandigarh and the impugned judgment of conviction and order of sentence dated 24.10.2017, passed by the Court of Judicial Magistrate Ist Class, Chandigarh are set aside and the present petitioner is ordered to be acquitted of the notice of the accusation.

7. However, in view of the law laid down by the Hon'ble Supreme Court in the matter of **Damodar S. Prabhu Vs. Sayed Babalal H. (supra)**, the petitioner is directed to deposit the 15% of the cheque amount by way of costs with the State Legal Services Authority, Union Territory, Chandigarh within a period of three months from today.

8. In case, the petitioner does not deposit the said amount with the State Legal Services Authority, Union Territory, Chandigarh, the present petition shall be deemed to be dismissed.

9. All other pending applications, if any, are also disposed off, accordingly.

23.08.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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