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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.2007 of 2019 (O&M)

Date of Decision: 28.11.2023

Amarjit Singh

...Petitioner

vs.

Sushma Bansal and another

...Respondents

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

Present : Mr. Jasdeep Singh, Advocate
for the petitioner.

Mr. Raj Kumar, Advocate
for respondent No.1.

Mr. Mohit Chaudhary, AAG, Punjab.

N.S.Shekhawat J. (Oral)

1. The petitioner had filed the present revision petition against the impugned judgment dated 08.08.2018 and order dated 09.08.2018, passed by the Court of Judicial Magistrate 1st Class, Rupnagar, 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 to pay a fine of Rs.5,000/- and also against the impugned judgment dated 18.07.2019 passed by the Court of Additional Sessions Judge, Rupnagar, whereby the appeal filed by the present petitioner was ordered to be dismissed.

2. As per the case of the respondent/complainant, the petitioner/accused was known to him as she was working as an Assistant

Librarian in GGSSTP High School, Power Colony, Rupnagar and the petitioner/accused was also working as Lab. Attendant. In the month of June, 2016, the petitioner/accused had borrowed a sum of Rs.2,50,000/- from her for some personal work and assured to return the same on demand. Ultimately, in discharging of his legal liability, the petitioner/accused had issued a cheque bearing No.154107 on 30.06.2017 in favour of the respondent/complainant. However, when the cheque was presented with the Banker by the respondent/complainant, it was returned back dishonoured with the remark "Insufficient Funds" vide memo dated 03.07.2017. The respondent/complainant served a registered legal notice upon the accused/petitioner on 07.07.2017, but the petitioner/accused did not return the amount and the respondent/complainant was constrained to file a criminal complaint under Section 138 of the Negotiable Instruments Act against the present petitioner.

3. During the course of hearing of the present case, vide order dated 08.08.2023, this Court had referred the matter to the Mediation and Conciliation Centre of this Court. Now the Mediator has reported that both the parties have settled their dispute by way of settlement deed dated 08.08.2023. As per the settlement deed dated 08.08.2023, the following settlement has been arrived at between the parties:-

- a) *The parties arrived at a settlement that first party would pay total Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) (cheque amount) + Rs.60,000/- (Rupees Sixty Thousand only) as litigation expenses total amount is Rs..3,10,000/- (Rupees Three Lakhs and Ten Thousand only). Out of above said amount, the first party has already paid Rs.1,00,000/- (Rupees One Lakhs only) in cash before the Hon'ble Court on 01.06.2023 to the counsel for the*

second party. The first party has handed over a demand draft No.101119 dated 28.07.2023 amounting to Rs.1,50,000/- drawn on UCO Bank in favour of the second party today in Mediation and Conciliation Centre and litigation amount of Rs.60,000/- has been paid online in the account of Sh. Nand Kishore-husband of second party which he duly acknowledges today.

- b) First party undertakes that if any technical fault is occurred while encash the above-said demand draft due to some spelling mistake the first party would fully cooperate the second party to issue the another demand draft or make the payment through another mode of online payment.*
- c) It has been mutually agreed between the parties since the settled amount has been paid by the first party to the second party, the second party shall have no objection if Criminal Revision Petition No.2007 of 2019 filed by the first party is allowed by the Hon'ble High Court.*
- d) The parties further undertake not to initiate or institute any unwanted litigation against each other and their family arising out of the matter in dispute. The parties further undertake not to use any document etc. against each other which have been left in their possession after this date of agreement or used as an evidence against each other in Court of Law.*
- e) As per knowledge of both the parties, there is no other pending litigation between the parties qua the present dispute. It has been further agreed between the parties that in case of coming into knowledge of any petition or case filed by any of the parties against other, the same shall be withdrawn by either of the party who has filed it.*
- f) This compromise has been arrived at between the parties without any pressure, undue influence or misrepresentation and both the parties have agreed to abide by the terms and*

conditions of the agreement. Both the parties shall be bound with the terms and conditions of this compromise.”

4. After the receipt of the report from the Mediation and Conciliation Centre of this Court, the matter has been taken up today for hearing.

5. Learned counsel for the parties submit that they have settled all their disputes and the offence in the present case may be ordered to be compounded.

6. Learned counsel appearing on behalf of the respondent/complainant submits that he has no objection in case the offence is ordered to be compounded by this Court and the petitioner is ordered to be acquitted.

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

8. 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 Cr.P.C. 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 Cr.P.C. 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.

10. It is not in dispute that the matter has been amicably resolved before the Mediation and Conciliation Centre of this Court. Even the respondent/complainant has no objection in case the petitioner/accused is ordered to be acquitted by this Court, on the basis of the compromise. Consequently, by invoking the powers of this Court under Section 147 of the Act read with Section 482 Cr.P.C., the petition is allowed and the parties are allowed to compound the offences and the petitioner is acquitted of the notice of accusation. The petitioner is also directed to deposit an amount of Rs.37,500/- , which is 15% of the cheque amount, within a period of two months, from today with the Punjab State Legal Services Authority. In case, the cost is not deposited with the Punjab State Legal Services Authority within

a period of two months from today, the present petition shall be deemed to be dismissed.

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

28.11.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No