**246 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CRR No.1825 of 2023 (O&M)**
**Date of Decision: 28.11.2023**

Manohar Lal …Petitioner

vs.

Vidya Devi and another …Respondents

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

Present : Mr. Shashikant Gupta, Advocate
for the petitioner.

Mr. I.P.S. Bains, Advocate
for respondent No.1.

Mr. Vivek Singla, APP. for U.T., Chandigarh.

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**N.S.Shekhawat J. (Oral)**

1. The petitioner had filed the present revision petition against the impugned judgment and order dated 20.12.2017, passed by the Court of Judicial Magistrate 1st 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 also against the impugned judgment dated 29.07.2023 passed by the Court of Sessions Judge, Chandigarh, whereby the appeal filed by the present petitioner was ordered to be dismissed.

2. As per complainant's version, the accused/petitioner and respondent/complainant were known to each other. As there were business relations between them, the petitioner/accused had borrowed a sum of

Rs.6,00,000/- from her for purchasing a vehicle and assured to return the same on demand. Ultimately, in discharging of his legal liability, the petitioner/accused had issued a cheque bearing No.050374 on 22.12.2015, amonting to Rs.6,00,000/- in favour of the respondent/complainant. However, when the cheque was presented with the Banker by the respondent/complainant, it was dishonoured with the remarks “Insufficient Funds” vide memo dated 27/30.01.2016. The respondent/complainant served a registered legal notice upon the accused/petitioner on 23.02.2016, 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 16.08.2023, 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 25.09.2023. As per the settlement deed dated 25.09.2023, the following settlement has been arrived at between the parties:-

*i) The parties have mutually agreed to settle the matter for a total sum of Rs.4,00,000/- (Rupees four Lacs only). Today, in the Mediation & Conciliation Centre, the first party has paid an amount of Rs.1,55,000/- (Rupees One Lakh Fifty Five Thousand only) in cash to the second party, which is duly received and accepted by the second party-Vidya Devi, in the Mediation and Conciliation Centre of this Hon'ble Court.*

*ii) That out of the remaining amount of Rs.2,45,000/- (Rupees Two Lakhs Forty Five Thousand only), the first party* *undertakes to pay a sum of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand only) to the second party in the shape of monthly installments @ Rs.5,000/- per month for a period of two years. That the first party has handed over post dated Cheque No.682313 dated 10.08.2025 for an amolunt of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand Only). In case, the first party-Manohar Lal fails to pay monthly installments @ Rs.5,000/- per month on or before 15th of every month or fails to clear the entire remaining amount within a period of two years then in that eventuality, the second party-Vidya Devi can present the aforesaid cheque to the Bank and in addition, can get the present case i.e. CRM-33697-2023 in/and CRR-1825-2023 revived before this Hon'ble Punjab and Haryana High Court and the amount already given as per compromise will stand forfeited and the first party will have no right to claim the said amount. The photocopy of the cheque is placed on record and the original cheque of the same has been handed over to the second party, which was duly received by her, drawn on Punjab and Sind Bank, Sector 15-D, Chandigarh, by the first party in the Mediation & Conciliation Centre.*

*iii) It is mutually agreed by the parties that the first party shall be at liberty to clear his liability by making the payment before the aforesaid schedule of payment to second party as per terms and conditions of present compromise and on receiving full and final settled payment, the second party will return the original cheque No.682313 dated 10.08.2025 for an amount of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand only).*

*iv) The parties have mutually agreed that the second party has given her saving bank account No.18140100014144 having IFSC Code: BARBOKHURDX with Bank of Baroda Bank Branch Village Raipur Khurd to first party for depositing* *the settled amount as per schedule.*

*v) It is mutually agreed between the parties that the second party undertakes that she will co-operate the first party to get the offence compounded by making her appearance or filling of affidavit in the Court and making statement with regard to 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.

9. So far as 15% of the cheque amount in terms of ratio of ***Damodar S. Prabhu's case (supra)*** is concerned, I am of the view that Section 147 of the Negotiable Instruments Act does not contain any guideline or procedure for proceeding with the compounding of the offences. Since scheme under Section 320 Cr.P.C cannot be followed in stricto sensu, therefore, Hon'ble Apex Court has also clarified that in order to discourage chronic litigants from delaying the composition of the offence under Section 138 of the Act, the scheme for imposing costs is considered to be a valid means to encourage compounding at

the earliest. Valuable time of the Court is also involved in the trial of the cases and the parties are not liable to pay any Court fee in such proceedings, even though the impact of the offence is largely confined to the private parties. The imposition of costs would be a matter of discretion of the Court.

10. In view of the fact that the parties have resolved their differences and have compromised the matter and also the fact that the petitioner is a poor person, I am of the view that 15% of the cheque amount towards cost(s) of litigation can be waived off in the interest of justice.

11. In view of the above discussion, the petition is allowed and the impugned judgments/order(s) are set aside and the parties are allowed to compound the offence in terms of Section 147 of the Act and petitioner is ordered to be acquitted of the charge.

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

**(N.S.SHEKHAWAT)**
**JUDGE**

**28.11.2023**
hemlata

Whether speaking/reasoned : Yes
Whether reportable : Yes