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

**CRR-2164-2019 (O&M)**
**Date of Decision:23.11.2023**

Rajni Sharma …Petitioner

Vs.

Devinder Singh and another …Respondents

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

Present: Mr. S.S. Aviraj, Advocate for the applicant/petitioner.

Mr. Madhur Jhangra, Advocate, for respondent No. 1.

Mr. Yashwant Singh Rathore, PP for U.T., Chd assisted by Ms. Sudha Singh and Yuvraj Singh Rathore, Advocate for respondent No. 2.

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**N.S.Shekhawat J.**

1. The present revision petition has been filed before this Court with a prayer to set aside the impugned judgment and order dated 20.10.2016 passed by the Court of JMIC, Chandigarh, whereby the present petitioner was held guilty for commission of offence punishable under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and was sentenced to undergo rigorous imprisonment for a period of six months and to pay the compensation amount to the tune of Rs.95,000/- to the complainant in terms of Section 357(3) Cr.P.C. within a period of one month from the date of order and in default of payment, the convict was further sentenced to undergo

rigorous imprisonment for one month and also to set aside judgment dated 26.08.2019 passed by the Court of Additional Sessions Judge, Chandigarh, whereby the appeal filed by the petitioner was ordered to be dismissed.

2. The brief facts of the case are that the complainant filed the complaint against the accused with the allegations that she was known to him for number of years and approached him for financial assistance to the tune of Rs.1,00,000/- as she was in dire need of money. The complainant advanced a sum of Rs.95,000/- to the accused as friendly loan in the month of June 2013. Accused promised to return the loan amount within 6 months. In order to discharge her legal liability, the accused issued a cheque No.019264 dated 29.4.2014 for Rs.95,000/- drawn on State Bank of India, Sector-37, Chandigarh in favour of the complainant which was dishonoured on its presentation with remarks 'Insufficient funds' vide memo dated 1.5.2014. The complainant sent a legal notice dated 12.5.2014 to the accused through registered post demanding the payment of cheque amount but the accused failed to make the payment within the statutory period and complaint was filed.

3. During the pendency of the petition, the petitioner has filed an application (CRM 44613 of 2023) under Section 147 of the Act read with Section 320 Cr.P.C., for compounding of the offence under Section 138 of the Act.

4. Learned counsel for the petitioner contends that during the pendency of the present petition before this Court, the parties have amicably resolved their dispute. The petitioner had paid a total sum of

Rs.95,000/- to respondent No.1 towards full and final settlement of his claim, arising out of the above mentioned cheque of Rs.95,000/- and the parties may be allowed to compound the offences.

4. A short reply has been filed by way of affidavit of respondent No.1 and the same was taken on record.

5. Learned counsel for the respondent No. 1 submits that the respondent No.1/complainant had received a total sum of Rs.95,000/- (Rs. 28,000/- as cash and Rs. 67,000/- by way of demand draft bearing No. 183273 dated 03.10.2023 drawn on State Bank of India, Sector 37-C, Chandigarh) 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 No. 1 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 No.1 had initiated the criminal prosecution of the petitioner on the ground that a cheque of an amount of Rs.95,000/- issued by the petitioner stood dishonoured. Now from the record, it is apparent that a sum of Rs.95,000/- has been paid by the petitioner to the respondent No. 1 and the learned counsel for the respondent No.1 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 settlement arrived at 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 20.10.2016 passed by the Court of JMIC, Chandigarh and the judgment dated 26.08.2019 passed by the Court of learned Additional Sessions Judge, Chandigarh are ordered to be set aside.

10. However, the petitioner is also directed to deposit an amount of Rs.14,250/-/- as costs which is 10% of the cheque amount, within a period of two months from today, which shall be deposited in the Punjab and Haryana High Court Bar Clerks' Association. In case, the cost is not deposited with the the Punjab and Haryana High Court Bar Clerks'

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

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

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

23.11.2023
*amit rana*

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