

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

**CRM-M-51940-2022
Date of Decision: 25.01.2023**

Shamsher Singh

..... Petitioner

Versus

Kapil Bhutani

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

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

Ms. Kamlesh, Advocate for
Mr. Sukhdeep Singh, Advocate
for the respondent.

HARSH BUNGER J. (ORAL)

Present petition is filed under Section 482 of the Code of Criminal Procedure seeking quashing of Criminal Complaint No.2490 of 2018 dated 23.05.2018 (Annexure P-1), filed under Sections 138/142 of the Negotiable Instruments Act and all the consequential proceedings arising therefrom, including summoning order dated 02.06.2018 (Annexure P-2) passed by the Court of Judicial Magistrate Ist Class, Karnal and also the judgment of conviction dated 22.02.2021 and order of sentence dated 23.02.2021 (Annexure P-3) passed by the said Court. Prayer for compounding of the offence in the present case on the basis of compromise dated 10.04.2021 (Annexure P-4) arrived at between the parties, has also

been made.

Learned counsel for the petitioner submits that pursuant to filing of the complaint (Annexure P-1) by the respondent/complainant, the petitioner was convicted by the Court of Judicial Magistrate Ist Class, Karnal vide judgment dated 22.02.2021 and he was sentenced vide order dated 23.02.2021 as under:-

Offence u/s	Sentence
138 of the Negotiable Instruments Act	Rigorous imprisonment for 1 year, besides payment of compensation equivalent to cheque amount of Rs.1,20,000/-, to the complainant within a period of 60 days.

It is submitted by learned counsel for the petitioner that now the petitioner has entered into an amicable settlement with the respondent/complainant by way of full and final settlement for an amount of Rs.80,000/-, as against the cheque amount of Rs.1,20,000/-, vide compromise dated 10.04.2021 (Annexure P-4).

Upon issuance of notice of motion in the present case, learned counsel for the respondent/complainant had appeared and vide order dated 21.11.2022, the parties were directed to appear before the Illaqa Magistrate/trial Court and to get their respective statements recorded with regard to the compromise arrived at between them.

In compliance thereof, the Judicial Magistrate Ist Class, Karnal, has submitted a consolidated report vide letter dated 21.12.2022, which indicates that the parties appeared before the Magistrate and got recorded their respective statements with regard to the validity of the compromise.

Relevant extract of the said report is reproduced as under:

“Copy of order dated 21.11.2022 passed by the Hon'ble High Court in CRM-M-51940-2022 was received. As per order dated 21.11.2022 passed by Hon'ble High Court the parties had been directed to appear before the Area Magistrate/Trial Court on 19.12.2022 to get their statement recorded. Today complainant Kapil made statement that he has compromised the matter with accused Shamsher on 10.04.2021, he had received compromise amount Rs.80,000/- from accused, nothing is due against accused, photocopy of compromise deed has already been filed in Hon'ble High Court, compromise is voluntary and without any pressure, there is no objection if the accused be acquitted. He was identified by his counsel. Accused Shamsher Singh has also appeared and made statement that he has compromised the matter with Kapil, compromise deed is Annexure-A as the original already filed in Hon'ble High Court, he has paid compromise amount of Rs.80,000/- to the complainant. He was identified by his counsel. On 13.12.2022 report from investigation officer has also been received with the remarks that no FIR has been lodged against accused regarding this complaint case, there is only one accused - Shamsher in this case, accused had not been declared proclaimed person/offender, compromise has already been effected between the parties, statement of parties has not been recorded during trial of the present case and complainant is victim. The compromise between the parties is genuine, voluntary, without any undue influence. The original statement of the complainant, accused and statement of investigation officer, copy of daily order passed today are annexed herewith for kind perusal of the Hon'ble High Court.

A perusal of the said report would show that statements of the concerned persons have been recorded, who have admitted that the matter has been compromised and it is reported that the said compromise arrived at between them is genuine, voluntary and without any pressure.

In view of the aforementioned circumstances, once the parties have settled their dispute then in terms of the judgment passed by the Hon'ble Supreme Court in “***Vinay Devanna Nayak Vs. Ryot Seva Sahakari Bank Ltd.***”, 2008(1) R.C.R. (Criminal) 249, the offence committed by the petitioner for which he has been convicted, is compoundable. Relevant paragraphs therefrom are extracted below:-

*“17. As observed by this Court in **Electronic Trade & Technology Development Corporation Ltd. v. Indian Technologists & Engineers**, 1996(1) RCR (Criminal) 592 : (1996)2 SCC 739, the object of bringing Section 138 in the statute book is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realised this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. (Act 55 of 2022). The said section reads thus:*

S.147. Offences to be compoundable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable. 18. Taking into consideration even the said provision (Section 147) and the primary

object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.

19. For the foregoing reasons the appeal deserved to be allowed and accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him.”

Learned counsel for the petitioner has also prayed for imposing the lesser amount of compounding fee, instead of 15% of the total cheque amount in question, as per the judgment rendered by the Hon'ble Apex Court in “**Damodar S. Prabhu Vs. Sayed Babalal H.**”, 2010 (5) SCC 663, on the plea that the petitioner herein is a poor person and he is not in a position to deposit the whole compounding fee/cost.

It is pertinent to mention here that the ratio of law laid down by the Hon'ble Apex Court in **Damodar S. Prabhu's case** (supra) was clarified by the Apex Court in “**Madhya Pradesh Legal Services Authority v. Prateek Jain and another**”, (2014)10 S.C.C. 690, wherein it has been held that Court may reduce the compounding fee for the given facts and circumstances of a particular case.

Accordingly, in view of the settlement of dispute between the parties and the offence in the present case being compoundable in nature, and also considering the fact that settlement was arrived at for an amount of Rs.80,000/- as against the cheque amount of Rs.1,20,000/-, it would be just

and appropriate to allow compounding of offence by imposing lesser compounding fee upon the petitioner in this case.

Consequently, the judgment of conviction dated 22.02.2021 and order of sentence dated 23.02.2021 (Annexure P-3) passed by the Court of Judicial Magistrate Ist Class, Karnal, against the petitioner, are set aside and the petitioner is acquitted from all the charges levelled against him in the present case, however, the same shall be subject to deposit of compounding fee/cost of Rs.2,000/- with the Haryana State Legal Services Authority, by the petitioner, within a period of 60 days from today.

After depositing of the aforesaid compounding fee/cost by the petitioner, he shall place on record a copy of receipt thereof and Registry is directed to submit report in this regard.

Present petition is disposed of in the aforesaid terms.

All pending application(s), if any, shall also stand disposed of.

25.01.2023*Apurva***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No