

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

119+204

CRM M-49852 of 2019 (O&M)

Date of Decision:22.11.2023

Naresh Kumar Maan

...Petitioner

Vs.

M/s Kartikay P.G. Accommodations through its proprietir

...Respondent

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

Present: Mr. Deepak Singh Saini, Advocate with
Ms. Vibha Nagar, Advocate, for the petitioner.

Mr. Bhisham Kumar Majoka, Advocate
for the respondent.

N.S.Shekhawat J.

1. The petitioner had filed the present petition under Section 482 Cr.P.C. with a prayer to quash the criminal complaint CNR No. HR FB 03-003125-2019 (NACT No. 803/2019) dated 10.01.2019 (filed on 31.01.2019) under Sections 138, 141 and 142 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and summoning order dated 30.04.2019 passed by the Judicial Magistrate First Class and all other consequential proceedings arising therefrom.

2. In fact, the respondent/complainant had filed a complaint under Section 138 of the Act against the petitioner, who is Principal of Vinayak College of Polytechnic (run by Shiv Education Society) and M/s Shiv Educational Society by alleging that cheque bearing No. 079850 dated 25.09.2018 for Rs. 1,50,000/- and cheque

bearing No.079853 dated 30.09.2018 for Rs. 2,00,000/- both drawn on Canara Bank, Kachwa Branch, Karnal, Haryana (total amounting to Rs. 3,50,00/-) were dishonoured.

3. During the pendency of the present petition, the petitioner filed an application (CRM 43795 of 2023) under Section 147 of the Act read with Section 482 Cr.P.C. seeking compounding the offence on the basis of the compromise entered between the parties, on payment of the entire cheque amounts.

4. Learned counsel for the petitioner submits that the matter had been amicably settled between the parties and the petitioner and M/s Shiv Educational Society, co-accused had made full and final settlement of their dues and the parties may be allowed to compound the offences.

5. A short reply has been found by way of affidavit of M/s Nidhi Rajpal, Proprietor of M/s Kartikay P.G. Accommodations, resident of House No. 731, Sector 21-C, Faridabad and she has also admitted the settlement. The respondent/complainant has stated that the petitioner had agreed to pay the total cheque amount to the respondent/complainant and settled the matter and the respondent has no objection, in case, the present complaint and the impugned order are ordered to be quashed on the basis of the compromise.

6. During the course of hearing, a demand draft bearing No. 845955 dated 12.10.2023 for a sum of Rs. 3,50,000/- has been handed over by the learned counsel for the petitioner to learned counsel appearing on behalf of the respondent/complainant. Even,

the said receipt alongwith the photocopy of the draft has been taken on record as Mark-A.

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 (3) SCC 663** has permitted the compounding of offences in cheque bouncing cases and held 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.

9. Since the parties have compromised the matter and the total sum of Rs. 3.50 lacs has been paid by the petitioner to the respondent/complainant, the complaint (Annexure P-1) and the

summoning order dated 30.04.2019 (Annexure P-6) and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioner as well as M/s Shiv Educational Society, who is also represented by the present petitioner.

10. However, the petitioner is also directed to deposit an amount of Rs.35,000/- 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.

22.11.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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