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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-155-2024 (O&M)

Date of Decision:03.04.2024

Sukhdev Singh

...Petitioner

Vs.

Amrik singh

...Respondent

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

Present: Mr. Ranjodh Singh Sidhu, Advocate
for the applicant-petitioner.

Ms. Gurpreet Kaur, Advocate, for the respondent.

N.S.Shekhawat J.(Oral)

1. The petitioner has preferred the present petition against the impugned judgment dated 06.12.2023 passed by the Additional Sessions Judge, Tarn Taran and the impugned judgment of conviction and order of sentence dated 17.09.2019 passed by the Additional Chief Judicial Magistrate, Tarn Taran, whereby, the petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and was sentenced to imprisonment for a period of one year. The convict is also ordered to pay compensation to the tune of cheque amount plus Rs.20,000/- to the complainant under Section 357 of the Cr.P.C. within one month.

2. As per the case set up by the complainant/respondent, the petitioner had taken a loan of Rs. 5,00,000/- on 16.05.2015 for personal necessity and had undertaken to repay the amount after one month. Thereafter, on the request of the respondent, petitioner issued a cheque for a sum of Rs.5,00,000/-, bearing No.428916 dated 08.07.2015 from his account No.76502 maintained with Punjab & Sind Bank, Branch Guru Ram Dass Marg, Tarn Taran in favour of the respondent. At the time of issuing of above said cheque, it was assured by the petitioner that the cheque issued by him would be honoured on its presentation for encashment as he has sufficient funds in his account with the bank. The respondent in good faith and on assurance of the petitioner received the said cheque. The respondent has deposited the said cheque in his account bearing No.50100011565536 with his banker i.e. HDFC Bank Limited, Branch Chohla Sahib, Tarn Taran for crediting the amount covered in the said cheque in his account after collecting and realizing the same from the account of the petitioner maintained with Punjab and Sind Bank, Branch Guru Ram Dass Marg, Tarn Taran. The banker of the respondent i.e. HDFC Bank Limited, Branch Chohla Sahib, Tarn Taran sent the said cheque in collection for realization of the amount covered in the cheque to drawer bank i.e. Punjab and Sind Bank, Branch Guru Ram Dass Marg, Tarn Taran in due course of its business, but, to the utter surprise of the respondent, the cheque was

dishonoured by the banker of the petitioner i.e. Punjab and Sind Bank, Branch Guru Ram Dass Marg, Tarn Taran vide memo dated 13.07.2015 stating reasons therein that "funds insufficient" in the account of the petitioner with the bank. The respondent has been informed in this regard by his banker i.e. HDFC Bank, Branch Chohla Sahib, Tarn Taran by issuing the above memo dated 13.07.2015. The respondent approached the petitioner personally and brought to his notice that cheque issued by him was dishonoured due to funds insufficient in his account but the petitioner did not accede to the genuine requests of the respondent in this regard. A legal notice under Section 138 of the Act was also served to the petitioner by the respondent on 20.07.2015 through registered post at the address mentioned above in the heading of the complaint through his counsel, but, the petitioner again did not make the outstanding payment. The petitioner did not reply to the legal notice till date. The petitioner did not return the amount of dishonoured cheque to the respondent so far. However, the petitioner has knowledge and notice about the dishonour of cheque issued by him. The petitioner, as such, committed offence punishable under Section 138 of the Act. With these broad allegations, the complaint was filed by the respondent.

3. During the pendency of the present petition, learned counsel for the petitioner has filed an application under Section 147 of the Act seeking permission to compound the offence punishable

under Section 138 of the Act. It has been stated that the matter has been amicably settled between the parties and a compromise deed (Annexure P-1) dated 09.01.2024 has been executed between the petitioner and the respondent. Since, the petitioner had already paid the cheque amount to the respondent, the application may be allowed and the parties may be permitted to compound the offences.

4. Learned counsel appearing on behalf of the respondent has also admitted that the matter has been amicably resolved between the parties and the respondent has received the entire amount and he has no objection if the petitioner is ordered to be acquitted of the notice of accusation.

5. A short reply has been filed by way of affidavit of respondent and the same was taken on record.

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 had initiated the criminal prosecution of the petitioner on the ground that a cheque of an amount of Rs.5,00,000/- issued by the petitioner stood dishonoured. Now from the compromise deed dated 09.01.2024 (Annexure P-1), it is apparent that a sum of Rs.5,00,000/- has been paid by the petitioner to the respondent and the learned counsel for the respondent 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 compromise 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 dated 06.12.2023 passed by the Additional Sessions Judge, Tarn Taran and the impugned judgment of conviction and order of sentence dated 17.09.2019 passed by the Additional Chief Judicial Magistrate, Tarn Taran are ordered to be set aside and the petitioner is ordered to be acquitted of the notice of accusation.

10. The petitioner is also directed to deposit an amount of Rs.75,000/- which is 15% of the cheque amount, within a period of two months, from today with the Punjab Legal Services Authority. In case, the cost is not deposited with the Punjab State Legal Service 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.

03.04.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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