

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-269-2019 (O&M)
Date of decision: 12.01.2024

Rita Aggarwal

....Petitioner.

Versus

Rita Singla

....Respondent.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Karan Pathak, Advocate,
for Mr. Gautam Dutt, Advocate,
for the petitioner.

Ms. Sharmila Sharma, Advocate,
for the respondent.

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SANJIV BERRY, J. (ORAL)

1. CRM-53765-2023 has been preferred under Section 482 Cr.PC read with Section 147 of the Negotiable Instruments (Amendment and Miscellaneous) Act, 2002, for compounding of the offences under Section 138 of the Negotiable Instruments Act, 1881, (for short 'N.I. Act') and further quashing of the judgment of conviction dated 26.09.2018 and order of sentence dated 29.09.2018, passed by learned Judicial Magistrate Ist Class, Gurugram.

2. Heard.

3. It is, *inter alia*, contended that in a complaint case i.e. CIS No. 10550-2016, titled as '*Rita Singla vs. Rita Aggarwal*' preferred under Section 138 of the N. I. Act filed by the respondent-Rita Singla against the petitioner-Rita Aggarwal, learned Judicial Magistrate Ist Class, Gurugram, convicted and sentenced the present petitioner to undergo simple imprisonment for a period of 03 months and to pay a fine of Rs. 5.00 lacs vide judgment of conviction dated 26.09.2018 and order of sentence dated 29.09.2018. The same was challenged by the petitioner and the learned Additional Sessions Judge, Gurugram, while deciding the criminal appeal, i.e. Criminal Appeal No. 89 of 2018, dismissed the same preferred by the present petitioner.

4. Learned counsel for the petitioner contends that in the meanwhile with the intervention of the respectables, compromise has been effected between the parties and an amount of Rs. 5.00 lacs, which was deposited in the Registry of this Court out of which Rs. 1.5 lacs has already been withdrawn by the petitioner, as is mentioned in the order dated 02.04.2019 and another amount of Rs. 3.50 lakhs has been paid in the Court after re-validating the draft in terms of the order dated 23.11.2023. He further contends that this apart, the petitioner has further paid Rs. 25,000/- by way of demand draft No. 748274 dated 11.01.2024, which has been accepted by learned counsel representing the complainant-respondent in Court today. As such, she seeks permission for compounding of the offences.

5. Learned counsel representing the complainant-respondent has admitted the fact that the complainant has already received Rs. 5.00 lacs on earlier dates as stated by learned counsel for the petitioner, besides receiving demand draft of Rs. 25,000/- paid today in Court and that he has specific instructions from the complainant-respondent that he has no objection in case permission to compound the offence is granted.

6. After hearing the respective submissions and perusing the record, the factual position as it emerges is that a criminal complaint under Section 138 of N.I Act had been filed against the petitioner by the respondent which the learned Judicial Magistrate Ist Class, Gurugram, had convicted and sentenced the petitioner vide judgment of conviction dated 26.09.2018 and order of sentence dated 29.09.2018, thereby holding the petitioner guilty for the offence punishable under Section 138 of the N.I. Act. It is not disputed that the aforesaid judgment of conviction and order of sentence (*supra*) was challenged by the petitioner unsuccessfully and the same was dismissed vide order dated 24.01.2019 in the appeal.

7. Aggrieved by the same, learned counsel for the petitioner had preferred the instant petition.

8. During the course of proceedings, settlement was effected between the parties and an amount of Rs. 5.00 lacs was paid to respondent, as has been mentioned by learned counsel for the petitioner and is not disputed by learned counsel for the respondent. This apart amount of

Rs. 25,000/- has further been paid in the form of demand draft which has been accepted in the Court today by learned counsel for the respondent.

9. Learned counsel representing the complainant-respondent has not opposed the request of the petitioner for compounding of the offences, as stated that she has clear instructions from the complainant-respondent in this regard.

10. This be the case, the case of the parties found fairly covered within the ambit of ***Damodar S. Prabhu vs. Sayed Babalal, AIR 2010 (SC) 1097***, wherein it has been held that in case, compromise has been effected at the stage of as in the present case, 15% of the cheque amount would have to be deposited by the petitioner as costs. The guidelines framed in the aforesaid judgment, i.e. ***Damodar S. Prabhu (supra)***, are as under: -

(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.

11. In the light of the guidelines given by the Hon'ble Apex Court in the aforesaid judgment, i.e. ***Damodar S. Prabhu (supra)***, application, i.e. CRM-53765-2023, for compounding of offences moved by the petitioner is allowed subject to the petitioner depositing 15% of the cheque amount, i.e. Rs. 60,000/- before the High Court Legal Services Committee which learned counsel for the petitioner undertakes to deposit today itself.

12. Thus, keeping in view of the above said facts and circumstances, present application for compounding of offences is allowed and as a consequent, the impugned judgment of conviction dated 26.09.2018 and order of sentence dated 29.09.2018 passed by learned Judicial Magistrate Ist Class, Gurugram, and the order in appeal, i.e.

24.01.2019, passed by learned Additional sessions Judge, Gurugram, stand set aside, subject to deposit of abovesaid amount of 15% of the cheque.

13. All the pending miscellaneous application(s), if any, stand disposed of in view of the abvoe said judgment.

12.01.2024
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(SANJIV BERRY)
JUDGE

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |