

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No.471 of 2022
Reserved on: 09.08.2024
Pronounced on: 30.08.2024

Koki Chickens
Vs.
State of Haryana & another
...Petitioner(s)
...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Dr. Vikas Rohal Advocate for the petitioner.

Mr. Viney Phogat, DAG, Haryana.
Mr. Rajesh Bansal, Advocate for respondent no.2.

ANOOP CHITKARA J.

Criminal Complaint	NACT-819-2015 under Section 138 of the Negotiable Instruments Act, District Panipat. Decided on: 23/24.04.2018
Criminal Appeal	No. CRA-18-2021, Additional Sessions Judge, Panipat. Decided on: 01.12.2021

- Ms. K. Kokila, the proprietor of the petitioner-firm, who stands convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (NIA), after dismissal of his appeal by the Appellate Court, has come up before this Court under Section 401 of the Code of Criminal Procedure, (CrPC) for quashing the proceedings because the parties have compromised the matter.
- The petitioner faced criminal prosecution at the hands of the private respondent, because of dishonour of the cheque in question.
- The jurisprudence behind the Negotiable Instruments Act, 1881 is that the business transactions are to be honoured. The legislative intention is not to make people suffer incarceration only because their cheques bounced. These proceedings are to recover the cheque amount by showing teeth of a penal clause.
- On 1.8.2024, counsel for the respondent no.2 had submitted that the matter stands compromised and he has no objection if the judgment of conviction and order of sentence are set aside based on compromise.

5. Given the judgment passed by Hon'ble Supreme Court of India in **Damodar S. Prabhu v Sayed Babalal**, (2010) 5 SCC 663, the law is well settled that when the entire money is paid, then the complainant cannot have any objection to such compromise, and 15% of the cheque amount is to be paid by the accused to the concerned State Legal Services Authority. The relevant extract of law laid down in **Damodar S. Prabhu** (*supra*), reads as under:

[17]. "...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."

6. However, on 1.8.2024, the petitioner had shown her inability to pay the 15% of the cheque amount in terms of judgment of the Hon'ble Supreme Court of India in **Damodar S. Prabhu** (*supra*). Therefore, this Court asked the petitioner to file affidavit regarding her inability to deposit 15% of the cheque amount.

7. On 9.8.2024, the petitioner had furnished her affidavit in Court and showed her inability to deposit the 15% of the cheque amount. The said affidavit is taken on record.

8. Given the affidavit furnished by the petitioner and no objection of the complainant-respondent no.2 to setting aside the judgment of conviction and order of sentence, this is a fit case where the inherent jurisdiction of the High Court under Section 401 of the CrPC supported by Section 147 of the NIA is invoked to disrupt the prosecution and set aside the judgment of conviction and order of sentence and all further proceedings mentioned above. The bail bonds are accordingly discharged. Keeping in view the financial incapacity of the petitioner to pay 15% of the cheque amount in terms of judgment of the Hon'ble Supreme Court of India in **Damodar S. Prabhu** (*supra*), she is exempted from depositing the same.

9. The Criminal Revision Petition is allowed. All pending application(s), if any, stand closed.

(ANOOP CHITKARA)
JUDGE

August 30, 2024
AK

Whether speaking/reasoned : Yes
Whether reportable : No