



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.248

CRR-924-2019 (O&M)
Date of decision:01.08.2024

M/s Madan Di Hatti Dera Baba Nanak road through its proprietor and
another

...Petitioners

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. G.S. Sirphikhi, Advocate for the petitioners.
Mr. Deepinder Brar, Senior DAG, Punjab.
Mr.H.S.Rakhra, Advocate for respondent No.2.

N.S. SHEKHAWAT, J.

1. The present criminal revision petition has been preferred against the impugned judgment dated 18.03.2019 passed by the learned Additional Sessions Judge, Gurdaspur, dismissing the appeal filed against the judgment dated 29.08.2017 passed by the trial Court, whereby the petitioner(s) was convicted for the offence punishable under Section 138 of the Negotiation Instruments Act, 1881 (for short 'the NI Act') and sentenced to undergo rigorous imprisonment as follows:-

Section	Sentence	Remarks
138 of the NI Act	Two years with fine of Rs.5,000/-. In default of payment of fine, to further undergo simple imprisonment for a period of one month	Rs.5,95,000/- as compensation to be paid to the complainant

2. During the pendency of the present petition before this Court, the matter was referred to the Mediation and Conciliation Centre of this Court. Both the parties, i.e., petitioner(s) and respondent Mo.2 appeared before the Mediation and Conciliation Centre of this Court and had signed a settlement-deed/agreement dated 25.05.2023 and had resolved all their disputes. The settlement amount was handed over by the petitioner(s) to respondent No.2 and it was agreed that respondent No.2 shall have no objection in case the present revision petition is allowed by this Court, in view of the compromise between the parties.

3. After the aforesaid compromise, vide order dated 30.11.2023, this Court had directed both the parties to appear before the Area Magistrate on 15.01.2024 or any other day thereafter, for getting their statements recorded with regard to the compromise. Thereafter, the parties appeared before the Court of Judicial Magistrate 1st Class, Batala on 15.01.2024 and their statements with regard to compromise were recorded.

4. A report has been received from the Court of Judicial Magistrate 1st Class, Batala, whereby it has been conveyed that the petitioner(s) have entered into a compromise with respondent No.2 without any pressure, threat or coercion or undue influence and the compromise is genuine. Even respondent No.2 had made a statement before the Judicial Magistrate 1st Class that he shall have no objection in case the present petition is allowed on the basis of compromise and he does not want to proceed against the petitioner(s).

5. I have heard the learned counsel for the parties and perused the case file.

6. Learned counsel appearing on behalf of the parties agreed that the parties have entered into a compromise and even respondent No.2 has no objection if the offences are ordered to be compounded by this Court and the petitioner(s) are ordered to be acquitted on the basis of compromise.

7. In **Cochin Hotels Co.(P) Ltd. and others Vs. Kairali Granites and others, 2006(2) RCR (Criminal) 333** and **K. Subramanian Vs. R. Rajathi represented by POAP Kaliappan, 2010 (1) RCR (Criminal) 184**, it has been held that even after finalization of judgment of conviction and order of sentence, petitioner(s) can resort to compounding mechanism in terms of Section 147 of the NI Act as the offence related to dishonouring of cheque is having compensatory profile and it should be given precedence over punitive mechanism. Offence is almost a civil wrong which has been clothed in a criminal overtone, therefore, the priority should be given to compensatory mechanism.

8. Further in **Damodar S. Prabhu vs. Sayed Babalal 2010 (5) SCC 663** and **Kaushalya Devi Massand vs. Roopkishore, 2011(2) RCR (Criminal) 298**, Hon'ble the Supreme Court has observed that the compromise in question would definitely go in long way to strengthen the mutual relationship between the parties and would serve as an ever lasting tool in their favour. This exercise would be in consonance with the spirit of Section 147 of the NI Act as endorsed in **Damodar S. Prabhu's** case (supra).

9. So far as 15% of the cheque amount in terms of ratio of **Damodar S. Prabhu's** case (supra) is concerned, I am of the view that Section 147 of the NI Act does not contain any guideline or procedure for

proceeding with the compounding of the offences. Since scheme under Section 320 Cr.P.C cannot be followed in *stricto sensu*, therefore, Hon'ble Apex Court has also clarified that in order to discourage chronic litigants from delaying the composition of the offence under Section 138 of the NI Act, the scheme for imposing costs is considered to be a valid means to encourage compounding at the earliest. Valuable time of the Court is also involved in the trial of the cases and the parties are not liable to pay any Court fee in such proceedings, even though the impact of the offence is largely confined to the private parties. The imposition of costs would be a matter of discretion of the Court.

10. In view of the fact that the parties have resolved their differences and have compromised the matter and also the fact that petitioner No.1 is a Firm and petitioner No.2 is aged about 74 years and is a poor person, I am of the view that 15% of the cheque amount towards cost(s) of litigation can be waived off in the interest of justice.

11. Keeping in view the facts and circumstances of the present case, the present revision petition is allowed and as a consequence thereof, the impugned judgments and order are hereby set aside. The petitioners are ordered to be acquitted of the charge. Pending application(s), if any, shall also stand disposed off.

(N.S. SHEKHAWAT)
JUDGE

01.08.2024
mks