

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 875 of 2024
Reserved on 09.08.2024
Pronounced on: 30.08.2024

Surender KumarPetitioner

Vs.

Punjab National Bank and AnotherRespondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Munish Kamboj (Through VC)
for the petitioner.

Mr. Gaurav Goel, Advocate and
Mr. Tarlok, Advocate
for respondent-Bank.

Mr. Viney Phogat, DAG, Haryana.

ANOOP CHITKARA J.

Complaint	No.630/2015, under Section 138 of the Negotiable Instruments Act.
Criminal Appeal	No. 239 of 2017, Sessions Judge, District Sirsa

1. The petitioner, who stands convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (NIA) after dismissal of appeal has come up before this Court under Section 401, Code of Criminal Procedure, (CrPC) for setting aside the judgment of conviction and order of sentence because the parties have compromised the matter.
2. The petitioner faced criminal prosecution by the private respondent, because of dishonour of the cheque in question.

3. 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.

4. After the conviction and dismissal of appeal, parties settled their dispute. Counsel for the respondent-Bank submits that the entire amount has been paid and they have no objection if the judgment of conviction and order of sentence are set aside based on compromise as full payment has been made.

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.

6. Given above, because of the compromise, 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 quash the proceedings mentioned above. Judgment of conviction and order of sentence and all emanating proceedings are quashed and set aside. The bail bonds qua the petitioner are accordingly discharged.

7. The petitioner has filed an application for a reduction of 15% amount payable to the State Legal Aid Authority. Although the cheque was drawn for a sum of Rs. 27,50,000/-, but the parties agreed for mutual compromise for a sum of rupees five lacs only (Rs. 5,00,000). As per the application, the convict has already paid the entire amount of rupees five lacs to the complainant. This show that the real value of controversy would not be five and a half times the settlement amount. The applicant has also mentioned further reasons in paragraphs 2 to 3. I have gone through the application contents, and I am satisfied that the amount at the rate of 15% would cause great hardship to the petitioner. Thus, the equity and compassion demand that the amount is reduced to the application's reach. Given above, in the entirety of facts and circumstances peculiar to this case, this court deems it appropriate to reduce the settlement amount payable to the State Legal Aid Authority to 15% of the settlement amount instead of cheque amount.

8. In Damodar S. Prabhu v Sayed Babalal, (2010) 5 SCC 663, Hon'ble Supreme Court holds,

[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."

9. The amount of settlement is rupees five lacs. (Rs. 5,00,000). The 15% of Rs. 5,00,000/- comes to be Rs. Seventy-five thousand only (Rs. 75,000/-). In the facts and circumstances peculiar to this case, this court deems fit and necessary to reduce it to rupees Rs. Seventy-five thousand only (Rs. 75,000/-). This compounding is subject to the petitioner depositing the aforesaid amount on or before March 31, 2024, with the concerned wing of High Court Legal Aid, failing which this entire order, including compounding, shall automatically stand recalled under Section 362 and Section 482 CrPC, and this petition shall be posted for hearing on merits. However, in extraordinary circumstances, the petitioner may approach this Court for an extension of time to deposit the compounding fee. Petitioner to file the proof of deposit before the trial Court with in the aforesaid time. Consequently, the judgment of conviction and order of sentence and all consequent proceedings would also stand set aside qua the petitioner(s), and the petitioner would also stand acquitted of all the offences captioned above.

Petition allowed in the terms mentioned above. Pending applications, if any, also stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: No.