

CRM-M-26764-2021
Date of Decision:02.04.2024

Vs.

...Respondent

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr. P.C with a prayer to quash the impugned order dated 11.12.2017, passed by the Court of Additional Sessions Judge, Karnal (Annexure P-2), to the extent of imposing of compounding fee at the rate of 15% of the cheque amount.

2. Learned counsel for the petitioner contends that the respondent had filed a criminal complaint No.575 of 2014 in the Court of Judicial Magistrate Ist Class, Karnal under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the “Act”) for recovery of cheque amount bearing No.891611 dated 27.12.2013 drawn on OBC Bank, Karnal for an amount of Rs.14,00,000/- and after holding the trial, the Trial Court convicted the petitioner under Section 138 of the “Act” and was sentenced to undergo RI for two years and compensation of Rs.14,00,000/- was ordered to be paid by him. Learned counsel for the petitioner further contends that the petitioner filed an

appeal i.e. CRA-106/2019 before the Court of Additional Sessions Judge, Karnal, however, during the pendency of the appeal, the matter was compromised between the parties and the parties filed an application for compounding of the offence under Section 147 of the Negotiable Instruments Act on 10.12.2017, however, vide the impugned order dated 11.12.2017, the Appellate Court held that the present petitioner/accused would be liable to pay the compounding fee at the rate of 15% of the cheque amount in view of the judgment passed by the Hon'ble Supreme Court in the matter of "**Damodar S. Prabhu Vs. Sayed Babalal H(2010) 5 SCC 663.**" Learned counsel for the petitioner further contends that in fact, three cheques of total amount of Rs.50,00,000/- issued by the petitioner were dishonoured and three different complaints were filed against him, including the present complaint. Thus, the total amount of compounding fee at the rate of 15 % comes out of Rs.7.50 lacs in all the three cases collectively. He further contends that the petitioner is a small businessman and during the period of nationwide lockdown, due to Covid-19 Pandemic, the business of the petitioner was ruined and his financial condition has further deteriorated. He further contends that the petitioner is on the verge of starvation and a lenient view may be taken in the present case.

3. On the other hand learned counsel appearing on behalf of respondent submits that the respondent has no objection, in case, the prayer is made by the present petitioner is accepted by this Court.

4. I have heard learned counsel for the parties and perused the record carefully.

5. 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.

6. 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 Negotiable Instruments 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 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.

7. In view of the fact that the parties have resolved their differences and has compromised the mater and also the fact that the petitioner has suffered huge financial losses, I am of the view that the 15% of the cheque amount towards cost(s) of litigation/compounding can be reduced to 05% of the cheque amount in the present case. Accordingly, the present petition is partly allowed and the impugned order dated 11.12.2017, passed by the Court of Additional Sessions Judge, Karnal is modified to the extent that the petitioner/accused shall be liable to pay the compounding fee at the rate of 05 % of the cheque amount.

9. The petition stands disposed off.

(N.S.SHEKHAWAT)
JUDGE

02.04.2024.
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No