

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-987-2024 (O&M)

Reserved on: 18.07.2024

Date of Pronouncement: 29.07.2024

Harcharan Singh

... Petitioner(s)

Versus

State of Punjab & another

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Karandeep Singh Sidhu, Advocate
for the petitioner(s).

Mr. Sukhdev Singh, AAG, Punjab.

Mr. Abhaysher Singh, Advocate
for respondent no.2.

ANOOP CHITKARA, J.

Criminal Complaint	No. NACT-1260/2019 under Section 138 of the Negotiable Instruments Act, District Ferozepur. Decided on: 5.1.2024
Criminal Appeal	No. 12 of 22.01.2024, Sessions Judge, District Ferozepur. CIS NO.CRA-22/2024 Decided on: 1.5.2024

1. The petitioner, who stands convicted and sentenced to a period of six months and was directed to pay compensation to the tune of the cheque amount i.e. Rs.1,80,000/- with interest by the trial court, for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (NIA), after dismissal of his appeal by the Sessions court, has come up before this Court under Section 401 of the Code of Criminal Procedure, (CrPC) for setting aside the judgment of conviction, based on compromise.

2. The petitioner faced criminal prosecution by the private respondent because of the dishonor of the cheque in question. Thus, the opposition of the State’s counsel to this petition is formal.

3. This court had asked the parties to appear before the concerned court and had asked the said court to give its report as per the format. The report reads as follows:

Name of the reporting Court	Judicial Magistrate Ist Class, Ferozepur
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Criminal Case no. before trial Court	NACT/1260/2019
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1.	Names of the complainant/ victims(s)/ aggrieved persons(s)	Kapil Wadhwa
2.	Dates on which the statement(s) of the complainant/ victims(s)/ aggrieved persons(s) were recorded	21.5.2024
3.	Has the identity of the complainant/ victims(s)/ aggrieved persons(s) been verified?	Yes
4.	Whether all the victims/ all the aggrieved persons have compromised the matter?	Yes
5.	Is there pressure, threat, or coercion upon the victim(s)/aggrieved person(s)/complainant?	No
6.	Names of the accused person(s)	Harcharan Singh
7.	Dates on which the statement(s) of the accused persons(s) recorded	22.5.2024
8.	Whether all the accused have compromised the matter? If no, then the names of the accused who have compromised.	Yes
9.	Whether the court is satisfied with the genuineness of the compromise?	Yes

4. 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. Now, as per the above-mentioned report, the parties have settled their disputes and have compromised the matter.

5. The present matter relates to an economic offence and the penal teeth are with an end object of recovery of legally enforceable debt or admitted liability.

6. In *Shakuntala Sawhney v Kaushalya Sawhney*, (1979) 3 SCR 639, at P 642, Hon'ble Supreme Court observed that the finest hour of Justice arises propitiously when parties, who fell apart, bury the hatchet and weave a sense of fellowship or reunion.

7. It would be relevant to refer to the judicial precedents in *Damodar S. Prabhu v Sayed Babalal*, (2010) 5 SCC 663, where based on the compromise, the convictions were set aside:

[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."

8. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter and has revisional jurisdiction under Section 401 CrPC. In the entirety of the facts and circumstances of the case and judicial precedent, I am of the considered opinion that the continuation of these proceedings will not serve any fruitful purpose whatsoever. 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. Given above, judgment of conviction and order of sentence and all the proceedings arising out of the complaint, captioned above, are set aside.

9. Given the judgment passed by Hon'ble Supreme Court of India in *Damodar S. Prabhu v Sayed Babalal*, (*supra*), 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.

10. Learned counsel for the petitioner has submitted that the petitioner is not in a position to deposit 15% of the cheque amount and therefore, he be given time to file an application for exemption from depositing 15% of the cheque amount. Respondent no.2 has no objection in case 15% of the cheque amount is reduced or the petitioner is exempted from depositing the same.

11. The amount of cheque in question was Rs. 1,80,000/-, 15% of which comes out to be Rs. 27,000/-. This compounding is subject to the petitioner depositing the amount of Rs.27,000/-, on or before 31.08.2024, with the concerned wing of High Court Legal Aid Committee, failing which this entire order, including compounding, shall automatically stand recalled under Section 362 and Section 482 CrPC and corresponding Section 403 and 528 BNSS, 2023, and this petition shall be posted for hearing on merits.

12. However, considering the prayer made on behalf of the petitioner to grant him liberty to file an application for exemption from depositing the 15% of the cheque amount, in case, after taking into account the family and financial liabilities, it is beyond the petition's financial capacity to pay the 15% of the cheque amount, then in such a situation, it shall be open for the petitioner to apply to section 528 BNSS, 2023 by placing on record the bank statements from 1.4.2023 till the date of all bank accounts, all fixed deposits, DEMAT account numbers, the current market value of jewellery, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand before 31.8.2024. After analyzing the petitioner's paying capacity, the Court shall consider reducing or dispensing with 15% of the amount mentioned earlier.

13. 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 within the aforementioned time. The bail bonds of the petitioner shall stand accordingly discharged subject to compliance. On failure to comply with the conditions mentioned above, the petition shall be listed for a final hearing, and the quashing order shall automatically stand recalled without any further reference to this Court.

Petition allowed in the terms mentioned above. All pending applications, if any, stand closed.

(ANOOP CHITKARA)
JUDGE

July 29, 2024
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Whether speaking/reasoned	:	Yes
Whether reportable	:	No