

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1064-2024 (O&M)

Reserved on: 19.07.2024

Date of Pronouncement: 29.07.2024

Krishan Pal Singh

... Petitioner(s)

Versus

State of Haryana & another

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Aashish Bishnoi, DAG, Haryana.

Mr. Mudit Johar, Advocate
for respondent no.2.

ANOOP CHITKARA, J.

Criminal Complaint	No. CIS No.COMA-608-2016 under Section 138 of the Negotiable Instruments Act, District Bhiwani. Decided on: 4.11.2019
Criminal Appeal	No. 266 of 2019/2022, Addl.Sessions Judge, District Bhiwani. CIS NO.CRA-465/2019 Decided on: 15.5.2024

1. The petitioner, who stands convicted and sentenced for a period of two years and to pay compensation to the tune of Rs.35,00,000/- by the trial court, for the commission of 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, Code of Criminal Procedure, (CrPC) for setting aside the judgment of conviction and order of sentence.
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. During the course arguments on 24.5.2024, counsel for the petitioner had submitted that the matter has been settled with the complainant, which was corroborated by counsel for respondent no.2-complainant. Accordingly, this Court directed the parties to appear before the trial Court/Illaq Magistrate/Duty Magistrate for getting their statements recorded with regard to the compromise arrived at between them and the concerned Court was asked to give its report as per the format. The parties have appeared before the concerned Court and got their statements recorded. The report of the concerned reads as follows:

Name of the reporting Court	Judicial Magistrate Ist Class, Bhiwani	
Criminal Case no. before trial Court	COMA-608-2016	
1.	Names of the complainant/ victims(s)/ aggrieved persons(s)	Dalip Singh (since deceased), Sandeep being his Legal heir.
2.	Dates on which the statement(s) of the complainant/ victims(s)/ aggrieved persons(s) were recorded	29.5.2024
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)	Krishan Pal Singh
7.	Dates on which the statement(s) of the accused persons(s) recorded	29.5.2024
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. It would be relevant to refer to the judicial precedents 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."

6. 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.

7. 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.

8. This Court has inherent powers under Section 482 read with Section 401 of the Code of Criminal Procedure to interfere in this kind of matter. In the entirety of the facts and circumstances of the case and judicial precedents, 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 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, the judgment of conviction and order of sentence dated 4.11.2019 and all proceedings arising out of the complaint are set aside.

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

10. Learned counsel for the petitioner submits that in case the 15% compensation amount could not be deposited, then in such a situation, the time to do so may be extended and prayed that in case it is beyond the financial capacity of the petitioner to pay the 15% amount. It may be dispensed with or reduced after considering the petition's paying capacity, family, and financial liabilities.

11. The amount of cheque in question was Rs. 30,00,000/-, 15% of which comes out to be Rs. 4,50,000/-. This compounding is subject to the petitioner depositing the amount of Rs. 4,50,000/-, on or before 31.10.2024, with the concerned Legal Services Authority, failing which this entire order, including compounding, shall automatically stand recalled under Section 362 and Section 482 CrPC or corresponding Section 403 and 528 BNSS, 2023, and this petition shall be posted for hearing on merits.
12. In case, after taking into account the family and financial liabilities, it is beyond the petition's financial capacity to pay the 15% amount, then in such a situation, it shall be open for the petitioner to apply to section 528 BNSS by placing on record the bank statements from 01 April 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. After analyzing the petition'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. The 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 the 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.
14. Petition allowed. All pending application(s), if any, stand closed.

(ANOOP CHITKARA)
JUDGE

July 29,2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No