113+249/2 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2115-2019 (O&M)
Date of Decision:22.04.2024

Sakawat Khan …Petitioner

Vs.

Ravi Kumar …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Munfaid Khan, Advocate
for the non-applicant/petitioner.

Mr.Shashikant Singh, Advocate
for the applicant/respondent.

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N.S.Shekhawat J.

CRM-54488-2023

1. The respondent has filed the present application under Section 482 Cr.P.C with a prayer to release an amount of Rs.25,000 in favour of the respondent, which was deposited by the petitioner in terms of the order dated 02.09.2019 passed by this Court.

2. Learned counsel for the respondent submits that the present case was referred to the Mediation and Conciliation Centre of this Court and parties have amicably resolved all their disputes and have signed the settlement/compromise deed dated 03.10.2023 before the Mediation and Conciliation Centre of this Court. He further contends that the petitioner had deposited a draft of Rs.25,000/-, in favour of the respondent and the said draft is with Registrar (Judicial) of this Court. He prays that the said draft may be handed over to the respondent.

3. On the other hand learned counsel appearing on behalf of

petitioner submits that he has no objection, in case, the application is allowed and an amount of Rs.25,000/- is handed over to the respondent of the present case.

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

5. The Registrar (Judicial) of this Court is directed to hand over the draft of Rs.25,000/- to the respondent in the present case against proper receipt and proper identification. Since the period of validity of the draft has already expired, the petitioner will take the old draft, from the respondent and shall hand over the new valid draft of Rs.25,000/- to the respondent within a period of 02 weeks.

6. The application stands allowed.

Main case

1. The petitioner had filed the present revision petition against the impugned judgment of conviction dated 02.11.2017 and order of sentence dated 03.11.2017, passed by the Court of Judicial Magistrate Ist Class, Faridabad, whereby the present petitioner was ordered to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act") and was sentenced to undergo SI for a period of three months and to pay the compensation amount of Rs.1,50,000/- to the respondent/complainant and also against the judgment dated 09.08.2019 passed by the Court of Additional Sessions Judge, Faridabad, whereby the appeal filed by the petitioner was ordered to be dismissed.

2. During the course of hearing of the above-mentioned case, the matter was referred to Mediation and Conciliation Centre of this Court for an

amicable settlement. Finally, both the parties entered into an compromise and had signed the settlement/compromise deed dated 03.10.2023 before the Mediation and Conciliation Centre of this Court and had resolved all the disputes in an amicable manner in the following terms:-

> *(i) That the first party has agreed to resolve the entire dispute regarding the amount due towards the second party for a total amount of Rs.2,50,000/- (Rupees Two Lacs and Fifty Thousand Only). Out of this amount, Rs1,00,000/- (Rupees One Lakh only) has been deposited by the petitioner before this Hon'ble Court in the present criminal revision, when the petition was referred to the Mediation. The said amount of Rs.1,00,000/- (Rupees One Lakh Only) may be release in favour of the respondent.*
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> *(ii) That the balance amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) shall be paid by the first party to the second party vide six instalments of Rs.25,000/- each (Rupees Twenty Five Thousand Only) vide demand draft drawn in favour of the party of the second part on 05.11.2023, 05.12.2023, 05.01.2024, 05.02.2024, 05.03.2024 and 05.04.2024.*
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> *iii) That after the receipt of the full and final amount, the second party shall have no objection if the present CRR No.2150 of 2019 along with CRR Nos.2125, 2114 and 2115 of 2019 filed by the first party is allowed and the first party is acquitted of the charges against him in view of the present compromise.*
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> *iv) The second party also be bound to make any statement before any Court of Law or furnish any affidavit, if required, to honour the present compromise after the receipt of the full and final amount.*

3. Learned counsel for the petitioner contends that the parties have entered into a compromise with each other and all the payments have been made as per the compromise deed/settlement dated 03.10.2023. He further contends that in view of the provisions mentioned in Section 147 of the Negotiable Instruments Act, the parties may be allowed to compound the

offence and the petitioner may be ordered to be acquitted.

4. Learned counsel appearing on behalf of the respondent also submits that he has on objection, in case, the petitioner is ordered to be acquitted in the present case on the basis of the compromise.

5. Learned counsel for the petitioner by relying upon **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** contended that even after finalization of judgment of conviction and order of sentence, petitioner can resort to compounding mechanism in terms of Section 147 of Negotiable Instruments 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.

6. Learned counsel also relied upon **Damodar S. Prabhu vs. Sayed Babalal H.(supra) Kaushalya Devi Massand vs. Roopkishore, 2011(2) RCR (Criminal) 298** and contended 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 Negotiable Instruments Act as endorsed in **Damodar S. Prabhu's case (supra).**

7. For the reasons recorded hereinabove, I deem it appropriate to dispose off the present revision petition in terms of compromise consequently the impugned orders are set aside.

8. 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.

9. In view of the fact that the parties have resolved their differences and have compromised the matter and also the fact that the petitioner is a truck driver and he is sole bread winner of the family, 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.

10. In view of the above discussion, the impugned judgments/order(s) are set aside and the parties are allowed to compound the offence in terms of Section 147 of the Act and petitioner is ordered to be acquitted of the charge.

11. All pending applications, if any, are disposed off, accordingly**.**

(N.S.SHEKHAWAT)
JUDGE

22.04.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No