

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

242 CRR 1864 of 2023 (O&M)
Date of Decision: 31.01.2024

Krishan Chand Verma and another ...Petitioners
Versus
State of U.T., Chandigarh and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Deepak Vashishth, Advocate
for the petitioner.

Ms. Simsi Dhir, AAP, for U.T., Chandigarh.

Mr. Amandeep Chhabra, Advocate
for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

CRM-34711-2023

1. Learned counsel for the applicant/petitioner submits that inadvertently Section 320 Cr.P.C. has been mentioned instead of Section 147 of Negotiable Instruments Act, 1881 in the head note of the present application.

2. On his oral request, the said mistake is ordered to be corrected and the Registry of this Court is directed to carry out the necessary corrections in the head note of the present application.

CRR 1864-2023

1. The present revision petition has been preferred against the impugned judgment dated 03.08.2023 passed by the Additional Sessions Judge, Chandigarh and the impugned judgment and order

dated 17.10.2017 passed by the Court of Judicial Magistrate 1st Class, Chandigarh, whereby, the present petitioner was ordered to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and sentenced to undergo rigorous imprisonment for one year. The convict was also sentenced to pay compensation under Section 357 of the Cr.P.C. to the tune of the cheques amount, i.e., Rs. 2 lacs alongwith interest at the rate of 9% per annum from the date of cheque till date.

2. Alongwith the revision, the petitioner has also filed an application under Section 147 of the Act read with Section 482 Cr.P.C. with a prayer to compound the offence in the present case, even after his conviction. Learned counsel for the petitioner contends that after the conviction by the appellate Court, the parties had amicably resolved all their disputes with the intervention of the relatives/respectable of the area and a compromise dated 10.08.2023 (Annexure P-1) was executed between them. As per the said compromise (Annexure P-1), the petitioner had paid the entire outstanding amount to the respondent/complainant.

3. A short reply by way of an affidavit of Shiv Kumar Gupta, respondent No.2, has been filed in the Court and as per the said affidavit, respondent No.2 had no objection, if the impugned judgements are set-aside by this Court.

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

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. It is not in dispute that the respondent had initiated the criminal prosecution of the petitioner on account of dishonour of the cheque. However, now in view of the settlement, it is apparent that the entire amount has been paid by the petitioner to the respondent and even the learned counsel for the respondent has made a statement that the offence may be ordered to be compounded and he has no objection, in case, the petitioner is ordered to be acquitted on the basis of the compromise between the parties. Consequently, by invoking the powers of this Court under Section 147 of the Negotiable Instruments Act read with Section 482 Cr.PC, the parties are allowed to compound

the offences and the petitioner is ordered to be acquitted of notice of accusation.

7. As a sequel of above discussion, the impugned judgment and order dated 17.10.2017 passed by the Court of JMIC, Chandigarh and the judgment dated 03.08.2023 passed by the Court of learned Additional Sessions Judge, Chandigarh are ordered to be 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 poor person, 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. All other pending applications if any, are also disposed off, accordingly.

31.01.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No