

CRR-2534-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2534-2023 (O&M)
Reserved on: 20.11.2024
Pronounced on: 28.11.2024

Din Dayal Yadav
...Petitioner(s)
Versus
Jai Bhagwan & another
...Respondent(s)

CORAM: HON’BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rajesh Lamba, Advocate
for the petitioner(s).

Mr. Anand Vardhan Khanna, Advocate
for respondent no.1.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J. (Oral)
(1)

Criminal Complaint	No. 89/2015 under Sections 138/141/142 of the Negotiable Instruments Act, District Gurugram. Decided on: 12.03.2018
Criminal Appeal	CRA No.169-2018, Addl. Sessions Judge, Gurugram. Decided on: 23.10.2023

The petitioner, who stands convicted for an offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo rigorous imprisonment for 3 months and to pay compensation of Rs.4,00,000/- to the complainant by the trial court, after the 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 and notice of sentence.

2. During the pendency of present petition, parties have arrived at an out-of-court settlement and prayed for setting aside of judgment of conviction and order of sentence based on said compromise.
3. Vide order dated 23.10.2024, this Court directed the parties/victim(s) to get their statements recorded before the trial Court/Illaqa Magistrate/Duty Magistrate and the concerned Court was asked to send its report in the prescribed format.
4. As per report dated 8.11.2024 of Judicial Magistrate Ist Class, Gurugram, it has been

CRR-2534-2023

explicitly mentioned that pursuant to order of this Court, the parties to the petition(s) had appeared before it and got their statement(s) recorded regarding the compromise effected between them. It has also been reported that such statements are genuine, voluntary and same have been recorded without any coercion or undue influence. It would relevant to extract the relevant portion of the report of the concerned Court:-

Name of the reporting Court	Judicial Magistrate Ist Class, Gurugram
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Criminal Case no. before trial Court	Crl. Comp. No.89 of 2015
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1.	Names of the complainant/ victims(s)/ aggrieved persons(s)	Jai Bhagwan
2.	Dates on which the statement(s) of the complainant/ victims(s)/ aggrieved persons(s) were recorded	8.11.2024
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)	Din Dayal
7.	Dates on which the statement(s) of the accused persons(s) recorded	8.11.2024
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

5. 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.

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.

CRR-2534-2023

8. 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."

9. This Court has powers under 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 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, compounding of offence can be allowed and this is a fit case where this Court can set aside the judgment of conviction in exercise of powers under Section 401 of the CrPC supported by Section 147 of the NIA. Given above, judgment of conviction and order of sentence and all the proceedings arising out of the complaint, captioned above, are set aside.

10. 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.

11. Learned counsel for the petitioner submits that they will deposit 15% of the cheque amount within the time granted by this Court.

12. The amount of cheque in question was Rs. 3,00,000/-, 15% of which comes out to be Rs. 45,000/-. This compounding is subject to the petitioner depositing the amount of Rs.45,000/-, on or before 31.01.2025, with the concerned State Legal Services Authority, 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.

13. In case, after taking into account the family and financial liabilities, it is beyond the petitioner's financial capacity to pay the 15% amount, then in such a situation, it shall be open for the petitioner to file an application under 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

CRR-2534-2023

metals, all precious articles, held either individually or jointly, and cash-in-hand. After analyzing the petitioner's paying capacity, the court shall consider reducing or dispensing with 15% of the amount mentioned earlier.

14. 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 in the registry of this 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.

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

(ANOOP CHITKARA)
JUDGE

November 28, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No