

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

CRR-1-2024

Reserved on: 12.02.2024

Pronounced on: 13.02.2024

2024:PHHC: 019559

M/S NEW BATTH ZIMIDARA STORE AND ANOTHER

. . . . PETITIONERS

Vs.

GODREJ AGROVET LTD.

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. K.S. Derabassi, Advocate, for the petitioners.

DEEPAK GUPTA, J.

Challenge in this revision is to the order dated 29.09.2023 passed by the Court of Ld. Additional Sessions Judge, Chandigarh, whereby petitioner has been asked to deposit 15% of the cheque amount as cost on account of compromise in CRA-39-2022.

2. On the complaint (Annexure P2) filed by the respondent, petitioner No.2-Manjit Singh, the proprietor of petitioner No.1-M/s New Bath Zimidara Store was convicted by the Court of Id. JMIC, Chandigarh under Section 138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act'] vide judgment dated 08.03.2022 (Annexure P3) in respect of dishonor of cheque for an amount of ₹10,03,457/-. Petitioner No.2 was sentenced to undergo imprisonment for a period of 1 year besides further direction to pay compensation of ₹20,06,914/- i.e. double the cheque amount to the complainant.

3.1 Against the aforesaid judgment of conviction and order of sentence, petitioners filed appeal (Annexure P4). However, during the pendency of the appeal, parties arrived at a settlement. An application was

moved by the complainant-respondent praying for compounding the sentence. Statements of both the parties were recorded on 10.04.2023 as per Annexure P6 and the Court directed the file to be put up before the National Lok Adalat on 13.05.2023 for further orders. However, on 13.05.2023, after noticing that compromise was not effected, file was sent back to the concerned Court for 29.09.2023.

3.2 On the adjourned date i.e. 29.09.2023, the Court of Id. Additional Sessions Judge, Chandigarh, noticed the sorry state of affairs to the effect that despite making statements before the Court on 10.04.2023, the parties had not appeared before the Lok Adalat for giving the compromise shape of the award. Even on that day, the appellant/convict had appeared late and so, he was asked to deposit 15% of the cheque amount as compounding fee with District Legal Services Authority, Chandigarh.

3.3 It is the aforesaid order dated 29.09.2023, which is assailed by way of present appeal.

4. Ld. counsel contends that on 13.05.2023, when the matter was directed to be put up before National Lok Adalat, respondent could not appear, but the Court drew a wrong impression that compromise was not effected. Ld. counsel contends further that the impugned order is not sustainable, as counsel for the respondent has no objection, if the condition of depositing the 15% of the amount is waived off. Besides, petitioner is a poor person and at the time of trial, he was not in a position to settle the matter with the respondent-complainant and it is only after arranging the necessary funds that he settled the matter with the respondent. Ld. counsel prays that in these circumstances, the Court should exercise its discretion to waive off the cost of 15%.

5. Ld. counsel has referred to “*Damodar S. Prabhu Vs. Sayed*

Babalal H.” (2010) 5 SCC 663, wherein Hon’ble Supreme Court had given directions to impose certain percentage of cost at the time of compounding the offence depending upon the stage, at which the compounding takes place, but also observed that the competent Court could reduce the cost with regard to the specific facts and circumstances of the given case, while recording reasons in writing for such variance. Ld. counsel also referred to decisions of Coordinate Benches of this High Court rendered in **“Deepak Syngle Vs. Sukhbir Singh and another”** 2023(4) RCR (Criminal) 799 and **“Iqbal Singh Vs. HDFC Bank Limited”** 2020(2) RCR (Criminal) 571, wherein Coordinate Benches of this Court, despite the conviction having been affirmed by the Appellate Court and the compounding having taken place during the pendency of the revision before this Court, allowed waiving of the cost.

6. I have considered submission of ld. counsel for the petitioners and appraised the record.

6. Perusal of the order dated 10.04.2023 (Annexure P6) would reveal that on that day, when the application for compounding was moved by the complainant and the statements of both the parties were recorded, no condition was imposed by the Court of ld. Additional Sessions Judge to pay cost of 15% of the cheque amount for granting permission to compound offence. The Court simply directed to put up the file before National Lok Adalat for further orders. It is the general practice in the District Courts that as and when a compromise is effected amongst the parties, on a day when there is no Lok Adalat, the Presiding Officers adjourns the matter for a day, on which the Lok Adalat is to take place so as to enhance the disposal in the Lok Adalat.

7. As it appears from the impugned order dated 29.09.2023, the Court of Ld. ASJ, Chandigarh was piqued by the fact that despite the

compromise having been effected, parties had not appeared before the Lok Adalat and as a punitive measure, directed the petitioners to deposit 15% of the cheque amount as compounding fee.

8. In *Damodar S. Prabhu (Supra)*, Hon'ble Supreme Court laid down certain judicial guidelines to impose cost at the time of compounding of the offence under Section 138 of the NI Act, so as to discourage the litigants from unduly delaying the composition of the offence. As per these guidelines, if the application is moved before the Magistrate at a subsequent stage of the trial, accused will be required to pay 10% of the cheque amount by way of cost. If application is moved before Sessions Court or High Court, in revision/appeal, then compounding will be allowed on payment of 15% of the cheque amount. However, Hon'ble Supreme Court further observed that graded scheme of imposing costs was a means to encourage compounding at an early stage of litigation so as to save valuable time of the Court and that imposition of cost by the competent Court is a matter of discretion and that in specific facts and circumstances of the Court, the competent Court can reduce the cost while recording reasons in writing for such variance.

9. In the case of *Iqbal Singh (Supra)* and *Deepak Syngle (Supra)*, compounding was sought before this Court after the conviction had been even upheld upto the Court of Sessions. After considering the circumstances put forth by the petitioner-accused, this Court while exercising its discretion, waived off the condition of imposition of any cost.

10. In the present case, the parties, as per the order dated 10.04.2023, settled their disputes at their own. As per the petitioners, they have fully paid an amount of ₹10 lakh to the respondent-complainant so as to settle the matter.

Being a poor person, it will be quite burdensome for him to pay additional cost

of 15%. Offence in question is compoundable. Compounding can be allowed at any stage.

11. Having regard to all the facts and circumstances, this Court by exercising its discretion allows the present petition. Impugned order dated 29.09.2023 passed by Id. ASJ, Chandigarh is hereby set aside. The Court concerned is directed to proceed further with the pending appeal, without insisting the petitioners to pay the cost of 15%.

Disposed of.

13.02.2024
Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |