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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 2nd OF AUGUST, 2023

CRIMINAL REVISION No. 451 of 2021

BETWEEN:-

1. **VIPUL TRADERS BADNAWAR THR. PROPRIETOR
RAHUL S/O ASHOK JAIN AGE 28 YEAR 84,
PETLAWAD ROAD WARD NO. 3 DISTRICT-DHAR
(MADHYA PRADESH)**
2. **RAHUL S/O ASHOK JAIN, AGED ABOUT 28 YEARS,
84, PETLAWAD ROAD WARD NO. 3 BADNAWAR
DISTT. DHAR (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI RISHI SHRIVASTAVA, ADVOCATE)

AND

1. **REKHA TRADERS 3 LAD GALI KALIKA MATA
MANDIR KE SAMNE (MADHYA PRADESH)**
2. **REKHA TRADERS DHAR THROUGH RAHUL S/O
MAHESH GARG 3, LADGALI, KALIKA MATA
MANDIR KE SAMANE DISTT. DHAR (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI YOGESH KUMAR MITTAL, ADVOCATE)

.....
*This revision coming on for orders this day, the court passed the
following:*

ORDER

Present revision has been filed against judgment dated 13.10.2020 passed by Third Additional Sessions Judge, Dhar in Criminal Appeal No.05/2020 whereby learned Sessions Court affirmed the order dated 06.01.2020 passed by Judicial Magistrate First Class, Dhar in complaint case SCNIA No.36/2018,

wherein the applicant has been convicted under Section 138 of Negotiable Instruments Act, 1881 and sentenced him to under 1 year rigorous imprisonment and compensation of Rs.14,00,000/- in default 6 months R.I.

2. Present revision is filed along with a compromise deed and according to which both the parties have entered into with their free will and there is no undue influence, pressure, force, duress or coercion over the parties and the entire amount has been duly received by the complainant as per their settlement. Hence, prayed that the sentenced of the appellant be reduced to the period already undergone.

3. Learned counsel for the complainant submits that the complainant has received the amount as per the settlement. He has no objection if the jail sentence is reduced to the period already undergone, as there is no minimum sentence provided under the Negotiable Instruments Act, 1881.

4. Since the parties are entering into compromise at the stage of revision, therefore, law laid down by the apex Court in the case of ***Damodar S. Prabhu Vs. Sayed Babalal H. reported in (2010) 5 SCC 663*** will be applicable in this case. Paragraph No.21 of the aforesaid judgment is reproduced as under:-

“21. 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:-

(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 Criminal Revision No.3198/2021 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.”

5. Further in paragraphs 24, 25 and 26 of the aforesaid judgment, learned Apex Court has held as under:

24. 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.

25. 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.

26. 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. In view of the aforesaid paragraphs, and considering the fact that the parties have amicably settled their dispute and have entered into compromise before this Court in the revision and decided to avoid further litigation, hence, the applicant is liable to pay 2% of the cheque amount i.e. Rs.28,000/- by way of cost to be deposited with the “State Legal Services Authority” Indore.

6. Subject to payment of cost at the rate of 2% of the cheque amount with the “State Legal Services Authority” Indore, within a period of 15 days from today, the applicant be released from the jail. Sentence awarded to the applicant is hereby modified by reducing the sentence to the period already undergone.

7. In case of failure to deposit of the said amount before the State Legal Services Authority, the petitioner shall undergo the original sentence and compensation as awarded by learned trial Court

With the aforesaid, revision stands disposed of.

Certified copy as per rules. जयते

(PREM NARAYAN SINGH)
JUDGE

Vindesh