



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 973/2021

Indrasingh S/o Sh. Dunger Singh, Aged About 40 Years, B/c Rajput, R/o Chawda Ki Dhaniya, Village Nandwan, Post Salawas, Teh. Luni, Dist. Jodhpur (Raj.). (Presently Lodged At Central Jail, Jodhpur).

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Surajkaran S/o Sh. Shivilal, B/c Soni, R/o Village Salawas, Dist. Jodhpur.

-----Respondents

For Petitioner(s)	:	Mr. Vikas Chouhan
For Respondent(s)	:	Mr. Mukhtiyaar Khan, P.P. Mr. Aqeel Ahmed, complainant

HON'BLE MR. JUSTICE DEVENDRA KACHHAWAHA

Order

16/12/2021

Accused-petitioner has preferred this revision petition under Section 397/401 Cr.P.C. to challenge judgment dated 21.05.2017, passed by Additional Sessions Judge No.3, Jodhpur Metro (for short, 'learned appellate Court'), whereby learned appellate Court has confirmed judgment dated 04.03.2017, rendered by Special Metropolitan Magistrate (N.I. Act Cases) No.1, Jodhpur Metro (for short, 'learned trial Court'). The learned trial Court, by its verdict dated 04.03.2017, indicted accused-petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'Act') and handed down sentence of one year's simple imprisonment. Besides imprisonment, the learned trial Court has also ordered that accused-petitioner should pay fine to the



complainant to the tune to Rs.6,80,000/- and in default of payment of compensation to further undergo two months' simple imprisonment-. Being aggrieved by the same, petitioner approached learned appellate Court but that effort did not fructify to his advantage as the learned appellate Court dismissed his appeal. This sort of situation has necessitated filing of this revision petition.

Learned counsel for the petitioner submits that now rival parties have sorted out their dispute and compromise has been arrived at between the parties and respondent No.2-complainant has received all the amount from the petitioner, therefore, no amount is now due between the parties. With this positive assertion, learned counsel has urged that both the impugned judgments be annulled and sentence handed down by learned trial Court and confirmed by learned appellate Court be set aside. The copy of the compromise is already placed on record. With these submissions, it is prayed that the matter may be decided in the light of the judgment passed by **Hon'ble Apex Court in case of Damodar S. Prabhu Vs. Sayed Babulal H. reported in 2010 (5) SCC 663.**

Learned counsel for the complainant, while acknowledging the compromise arrived at between the parties, would urge that looking to the nature of offence and in the wake of settlement of dispute between rival parties, the conviction recorded by learned trial Court and upheld by the learned appellate Court merits annulment.

I have heard learned counsel for the accused-petitioner and learned counsel for the complainant and perused the compromise arrived at between the parties.



Chapter XVII of the Act deals with penalties in case of dishonor of cheques for insufficiency of funds in the accounts. A complete procedure in this behalf is provided under Section 138 to 147 of the Act. Section 142 deals with cognizance of offence and Section 143 empowers a Court to try cases under Section 138 of the Act summarily. As per Section 147 of the Act, every offence punishable under the Act is compoundable notwithstanding anything contained in the Cr.P.C. While it is true that the offence is compoundable but a pivotal question, which has emerged for consideration, is whether revisional powers can be exercised by this Court to compound the offence under Section 138 of the Act after conviction of the petitioner by appellate Court. The legal position in this behalf was fluid until the judgment rendered in *Damodar S. Prabhu Vs. Sayed Babalal H.* [(2010) 5 SCC 663] by the Supreme Court. In the said verdict, Supreme Court has examined the provisions of Section 138 and 147 of the Act threadbare and observed that compensatory aspect of the remedy should be given priority over the punitive aspect. While discussing object of Section 138 of the Act, the Court held:

“However, there are some larger issues which can be appropriately addressed in the context of the present case. It may be recalled that Chapter XVII comprising Section 138 to 142 was inserted into the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988). The object of bringing Section 138 into the statute was to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. It was to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers. If the cheque is dishonoured for insufficiency of funds in the drawer's account or if it exceeds the amount arranged to be paid from that



account, the drawer is to be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

It may be noted that when the offence was inserted in the statute in 1988, it carried the provision for imprisonment up to one year, which was revised to two years following the amendment to the Act in 2002. It is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a 'fine which may extend to twice the amount of the cheque' serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions."

While switching on to examine Section 147 of the Act, Supreme Court has observed that this being an enabling provision, it can serve as exception to the general rule incorporated in sub-sec.(9) of Section 320 Cr.P.C. The Court, while laying emphasis on non-abstante clause under the aforesaid Section, further held that Section 147 inserted by way of amendment to special law will override the effect of Section 320(9) Cr.P.C. Placing reliance on some earlier judgments, the Court, has approved compounding of offences at later stage of litigation in cheque bouncing cases, and held:

"The compounding of the offence at later stages of litigation in cheque bouncing cases has also been held to be permissible in a recent decision of this Court, reported as K.M. Ibrahim v. K.P. Mohammed & Anr., wherein Kabir, J. has noted (at SCC p. 802, paras 13- 14):



"13. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. ...

14. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution."

It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [Cited from: K.N.C. Pillai, R.V. Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p. 444]:

"17.2 Compounding of offences,- A crime is essentially a wrong against the society and the State. Therefore, any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognize some of them as compoundable offences and some others as compoundable only with the permission of the court. ..."

In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [Cited from: Arun Mohan, Some Thoughts Towards Law Reforms on the topic of Section 138, Negotiable Instruments Act -Tackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p. 5]



"... Unlike that for other forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

Finally, the Court has framed certain guidelines for a graded scheme of imposing costs on parties, who unduly delay compounding of the offences. Framing the guidelines, the Court held:

"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 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. "

Applying the ratio decidendi of Damodar S.Prabhu (supra) and the guidelines framed therein, on the strength of compromise arrived at between petitioner and the complainant, I feel persuaded to exercise revisional jurisdiction for doing real and substantial justice in the matter for the administration of which alone the Courts exist.

Accordingly, I prefer to give priority to the compensatory aspect of remedy over the punitive aspect in the matter in the wake of settlement of dispute and compromise being arrived at between the rival parties.

In view of foregoing discussion, the instant revision petition is allowed, impugned judgment dated 21.05.2019 passed by learned appellate Court as well as judgment dated 04.03.2017 passed by the learned trial Court are set at naught as a consequence of compromise having been arrived at between the





rival parties and while acknowledging their compromise offence under Sec. 138 of the Act is hereby compounded by resorting to Section 147 of the Act. Compounding of offence under Section 138 of the Act, obviously, entails acquittal of the petitioner.



However, taking into account the fact that petitioner has caused undue delay in making endeavour for compounding of offence, in terms of guidelines framed by the Supreme Court in Damodar S. Prabhu (supra), accused-petitioner is ordered to be released, if not required in any other case, subject to the condition that he deposits 15% of the cheque amount, i.e., Rs.75,000/- (5,00,000- x 15%) with the District Legal Services Authority, Jodhpur within a period of one month from today. In case, the cost is not deposited by the petitioner before the Rajasthan State Legal Services Authority within the stipulated period, the revision petition may be listed before this Court for passing appropriate orders.

After detailed discussion, the revision petition is allowed in the light of judgment of Damodar S. Prabhu (supra).

(DEVENDRA KACHHAWAHA),J

165-Bharti/-