

Non-decisioning on application – Revisional jurisdiction -- Trial Court adjourning the application for setting aside ex-parte injunction order and extending the ad-interim order without deciding the application – Revision disposed of with directions to the trial Court to decide and dispose of the application under Order 39 Rule 4 CPC expeditiously preferably on the next date of hearing fixed before it, in accordance with law.

(Para 1-3)

MANJARI NEHRU KAUL, J. (ORAL) –

1. The instant revision petition has been filed under Article 227 of the Constitution of India for setting aside orders dated 04.03.2022 and 24.03.2022 (Annexures P-8 and P-9) passed by learned Civil Judge (Jr. Divn.), Gurugram in Civil Suit No.4210 of 2020 titled as 'Rahul Kalsi Vs. M/s Intelligent Instruments Pvt. Ltd. and others' whereby the trial Court, instead of deciding the application under Order 39 Rule 4 CPC for setting aside ex-parte injunction order, is adjourning the case and extending the ad-interim order.

2. Learned counsel for the petitioners submits that the petitioners would be satisfied if the directions are issued to the trial Court for deciding the application under Order 39 Rule 4 CPC expeditiously.

3. In the circumstances, the instant revision petition is disposed of with directions to the trial Court to decide and dispose of the application under Order 39 Rule 4 CPC expeditiously preferably on the next date of hearing fixed before it, in accordance with law.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Vikas Bahl, J.

CRR-4340-2016 (O&M)

Decided on: 25.04.2022

Darshan Singh

Petitioner

Versus

Punjab Agricultural Development Bank Limited

Respondent

Present:

Mr. H.S. Jugait, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

Mr. I.S. Mann, Advocate for the respondent.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 – Code of Criminal Procedure, 1973 (2 of 1974), Section 320, 401, 482 -- Cheque bounce case – Compromise after conviction – Compounding of offence -- Exemption from 15% of Cheque amount -- Petitioner is stated to be a poor farmer, who had taken the said loan for treatment of his son, who was suffering from cancer and stated to be 67 years of age – Petitioner

exempted from paying 15% of the cheque amount -- Application u/s 320 Cr.P.C. read with Section 482 of Cr.P.C. for compounding of offence allowed -- Judgment and order of sentence set aside.

(Para 17-19)

Cases referred:

1. Damodar S. Prabhu Vs. Sayed Babalal H., 2010(5) SCC 663 = (2010) Law Today Live Doc. Id. 15231.
2. Rajendra Vs. Nand Lal, 2020 (1) RCR (Criminal) 166.
3. Tilak Kataria Vs. State of Haryana and another, 2021 (3) RCR (Criminal) 404.

VIKAS BAHL, J. (ORAL) –

1. Challenge in the present Criminal Revision is to the judgment dated 07.10.2015 passed by the Additional Chief Judicial Magistrate, Sri Muktsar Sahib, vide which the petitioner has been convicted under Section 138 of Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) and has been awarded rigorous imprisonment for a period of one year and to pay a fine in the sum of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of seven days.

2. Challenge has also been made to the judgment dated 02.11.2016 passed by the Additional Sessions Judge, Sri Muktsar Sahib, vide which the appeal filed by the petitioner has been dismissed and the sentence has been upheld.

3. The brief facts of the present case are that respondent-Punjab Agricultural Development Bank, Sri Muktsar Sahib (for short “the bank”) through its Branch Manager had filed an application under Section 138 of the Act of 1881 for dishonour of cheque dated 19.08.2013 for an amount of Rs.1,92,600/- issued by the present petitioner for the repayment of debt. After issuing the legal notice, the said payment was still not made and the complaint under Section 138 of the Act of 1881 was filed.

4. The Additional Chief Judicial Magistrate, Sri Muktsar Sahib, after considering the evidence and documents on record, had convicted the petitioner as has been stated hereinabove.

5. The petitioner preferred an appeal and the Additional Sessions Judge, Sri Muktsar Sahib, after reconsidering the entire evidence on record, dismissed the appeal vide judgment dated 02.11.2016. It is against the said two judgments that the present Criminal Revision has been filed.

6. During the pendency of present Criminal Revision, compromise has been effected between the parties and an application bearing No.CRM-14235-2022 under Section 320 Cr.P.C. read with Section 482 of Cr.P.C. for compounding of offence during the pendency of the present Criminal Revision, has been filed.

7. Learned counsel for the petitioner as well as respondent have jointly submitted that in the present case, compromise has been effected between the parties and the amount which was due from the petitioner has been paid to the Muktsar Primary Cooperative Agricultural Development Bank Limited, Muktsar

and regarding the same, certificate dated 13.04.2022 (Annexure P-1) has also been filed, in which, it has specifically been stated that the petitioner has repaid the entire amount and the bank has no objection if the case pending against the petitioner is closed.

8. Learned counsel for the respondent-Bank has stated that the said Certificate is genuine and authentic and the compromise is also bona fide.

9. Learned counsel for the petitioner has also submitted that in the present case, the petitioner would not be in a position to pay 15% of the cheque amount as the petitioner is a poor marginal farmer who had taken this loan for the treatment of his son, who was suffering from cancer and the said son had passed away and it is with great difficulty, the petitioner has been able to repay the said amount in installments and the petitioner who is 67 years of age, does not have sufficient resources to pay any additional amount. Reliance in this regard has been made to the paragraph 17 of the judgement passed by the honorable supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal H.** reported as **2010 5 SCC 663 = (2010) Law Today Live Doc. Id. 15231** as well as judgment of the Hon'ble Supreme Court in **Rajendra Vs. Nand Lal** reported as **2020 (1) RCR (Criminal) 166** and also the judgment of a Coordinate Bench of this Court in **Tilak Kataria Vs. State of Haryana and another** reported as **2021 (3) RCR (Criminal) 404**.

10. Learned counsel for the respondent-bank has also stated that they have no objection in case the said amount of 15% is waived off in view of the special circumstances in the present case.

11. Learned State counsel has stated that since the present case is under Section 138 of the Act of 1881 and the matter has been compromised, they would have no objection in case the revision petition is allowed, in accordance with law.

12. This Court has heard the learned counsel for the parties.

13. From the above facts, it is apparent that both the contesting parties are ad idem that the compromise has been effected between the parties without any pressure, threat or undue influence and the terms of the said compromise have been duly complied with. The compromise would go a long way in maintaining the peace and harmony between the parties and thus, a prayer has been made to the Court for compounding the offence in terms of Section 147 of the Act of 1881 read with Section 320 (6) Cr.P.C. Since the offence relating to dishonour of cheque has a compensatory profile and is required to have precedence over punitive mechanism, therefore, the present revision petition deserves to be allowed.

14. The Hon'ble Supreme Court of India in case of **Rajendra** (Supra) and after taking into consideration the law laid down in **Damodar S. Prabhu** (supra) and in view of the facts and circumstances of the said case, did not impose cost. The relevant portion of the said judgement is reproduced hereinbelow:

*"5. Learned counsel appearing for the appellant submitted that in view of the compromise arrived at between the parties, the conviction of the appellant under Section 138 of N.I. Act is to be set aside and the appellant is entitled to an acquittal. The learned counsel for the appellant has drawn our attention to the case of **Damodar S. Prabhu vs. Sayed***

Babalal H., (2010) 5 SCC 663 and submitted that in cases arising under Section 138, N.I. Act where the parties are compromising the matter this Court has issued the guidelines as to the levy of costs depending upon stage of the compromise arrived at between the parties. The learned counsel for the appellant has submitted that in the special facts and circumstances of the case, the Court can waive the costs to be levied. As discussed earlier, in the present case, the appellant, accused was acquitted by the Trial Court inter alia on the ground that the respondent had not established that there was a legally enforceable debt. Since the appellant was convicted only in the High Court, the appellant had substantial ground to raise in the criminal appeal filed before this Court. Because of the reversal of the acquittal by the High Court and the conviction recorded only by the High Court, the appellant had opportunity of negotiating for settlement in this Court after filing the appeal. In such facts and circumstances of the case, this is not a case where cost is to be imposed, as per the guidelines laid down by this Court as per the judgment reported in (2010) 5 SCC 663 (supra)."

15. The abovesaid case was a case of judgment of reversal and on account of the said fact, the Hon'ble Apex Court waived the costs.

16. Similarly, a Coordinate Bench of this Court in Tilak Kataria (supra) has also held as under:

"At this stage, learned counsel for the petitioner states that the petitioner, in order to pay the settlement amount to the complainant, has exhausted his entire resources, including the sale of his house/flat and, thus, he is not in a position to deposit the costs in terms of the judgment of the Hon'ble Supreme Court in Damodar S. Prabhu Vs. Sayed Babalal H., (2010)5 SCC 663. He, thus, contends that in view of the peculiar facts of the present case, wherein the complainant has accepted the settled amount, the imposition of costs in terms of the judgment in Damodar S. Prabhu's case (supra) may be waived off.

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After hearing the learned counsel for the parties and taking into consideration the fact that the parties have settled their dispute(s) by way of the compromise dated 23.01.2019, coupled with the law laid down by the Hon'ble Apex Court in Prateek Jain's case (supra) and keeping in view the specific/special reasons, this Court deviates from the conditions laid down by the Hon'ble Apex Court in Damodar S. Prabhu's case (supra) and grants permission to the parties to compound the offence punishable under Section 138 N.I.Act. Accordingly, the impugned judgments and orders passed by the Courts below are set aside. The complaints under Section 138 N.I. Act are dismissed and the petitioner is acquitted of the notice(s) of accusation served upon him.

Disposed of in the aforementioned terms"

17. In the present case, the factum of compromise as well as the fact that the petitioner has repaid the entire amount to the bank and that the bank does not have any objection in case, the present application filed under Section 320 of Cr.P.C. for compounding of offence is allowed and the Criminal Revision is also allowed, is not in dispute. The petitioner was granted the benefit of

suspension of sentence vide order dated 16.02.2017 passed by the Coordinate Bench of this Court, after being in custody for a period of more than three months. The petitioner is stated to be a poor farmer, who had taken the said loan for treatment of his son, who was suffering from cancer. The petitioner is stated to be 67 years of age and it had been argued that it was with great difficulty, the petitioner has paid the said amount in installments and thus, the case of the petitioner would fall within the exception carved out in **Damodar S. Prabhu's case** (Supra) and also would fall within the four corners of the law laid down by the Hon'ble Supreme Court in **Rajendra's case** (Supra) and by the Coordinate Bench of this Court in **Tilak Kataria's case** (Supra) and accordingly, the petitioner is exempted from paying 15% of the cheque amount.

18. It is settled law that this Court has the power to set aside the judgment of conviction against the petitioner on the basis of a valid compromise. The compromise in the present case is genuine and valid

19. Keeping in view the abovesaid facts and circumstances, the application under Section 320 Cr.P.C. read with Section 482 of Cr.P.C. for compounding of offence is allowed and the main Criminal Revision is also allowed and judgment and order of sentence dated 07.10.2015 as well as judgment dated 02.11.2016 are set aside.

20. All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Meenakshi I. Mehta, J.

Civil Revision No.1233 of 2017 (O&M)

Decided on: 25.04.2022

Munshi Ram & Others

Petitioners

Versus

Sushil Chand & Others

Respondents

Present:

Mr. Jatin Hans, Advocate, for the revisionists-petitioners.

Mr. Anurag Jain, Advocate along-with Ms. Kanupriya, Advocate, for respondent No.10.

Respondents No.1 to 9 already proceeded against ex parte and Service of notice upon respondent No.11 dispensed with vide the order dated 16.05.2018.

Code of Civil Procedure, 1908 (V of 1908), Order 18 Rule 3 -- Additional evidence – Rebuttal evidence -- Plaintiffs intended to examine HS as witness in their additional evidence which was dismissed – Plaintiffs then moved application to examine the same person in their rebuttal evidence -- Plaintiffs have left no stone unturned to fill up the lacunae in their affirmative evidence and now, under the garb of seeking permission to examine the said plaintiff as witness in their rebuttal