

PBBT010054872019



Presented on : 25-03-2019  
Registered on : 26-03-2019  
Decided on : 24-08-2020  
Duration : 1 years, 4 months, 30 days

IN THE COURT OF SHRI KAMALJIT LAMBA,  
SESSIONS JUDGE, BATHINDA.  
(U.I.D. No.PB0055).

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CNR No.PBBT01-005487-2019.  
CIS No.CRA-173-2019.  
CRL. APPEAL NO.27 OF 26.03.2019.  
DATE OF DECISION: **August 24, 2020.**

Jagpal Singh son of Gamdoor Singh, resident of # 299, Sath De near and Basti Himatpura Bam, Tehsil Malout, District Muktsar.

...Appellant-Accused.

Versus

HDFC Bank Limited, a banking company incorporated and registered under Companies Act, 1956 its Head Office at "HDFC House", Senapati Bapat Marg, Lower Parel (West) Mumbai and Branch at Muktsar through its Attorney Shri Sukhpreet Singh, Assistant Manager.

...Respondent.

CRIMINAL APPEAL AGAINST THE  
JUDGMENT OF CONVICTION AND ORDER  
OF SENTENCE DATED 25.02.2019 PASSED BY  
MS. RAJBINDER KAUR, JUDICIAL  
MAGISTRATE IST CLASS, BATHINDA IN FILE  
NO.539 OF 16.07.2016, CIS NO.COMA/  
1599/2016.

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Present: Appellant on bail, with counsel Shri B.S. Jaurkian.  
Shri Naveen Goyal, counsel for the respondent Bank.

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## **JUDGMENT**

1. The instant appeal has been preferred by Jagpal Singh son of Gamdoor Singh, appellant (accused), against the Judgment of conviction and order of sentence dated 25.02.2019 passed by Ms. Rajbinder Kaur, Judicial Magistrate Ist Class, Bathinda, in Criminal File No.539 dated 16.07.2016, CNR No.PBBT03-011119-2016, CIS No.COMA/1599/2016, vide which the appellant (accused) has been convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo RI for a period of two years and to pay compensation to the complainant bank to the tune of cheque amount i.e. Rs.20,00,000/- along with interest at the rate of 9% per annum from the date of issuance of the cheque, in question, till the date of passing of the Judgment.

2. The facts required to be noticed for the purpose of the disposal of the instant appeal are that complainant is a banking company having its registered office at "HDFC House", Senapati Bapat Marg, Lower Parel (West) Mumbai and one of its Branch is at Muktsar. The instant complaint under Section 138 of the Negotiable Instruments Act (here-in-after referred as 'Act' only) has been filed against Jagpal Singh through Shri Sukhpreet Singh, Assistant Manager, who is alleged to be competent and authorized person to file it, on the averments that accused Jagpal Singh had availed KGC of Rs.20,00,000/- vide Account No.50200006410531 and agreed to repay the same in instalments. It is alleged that in discharge of his legal liability, accused issued a cheque

bearing No.000004 dated 8.6.2016 amounting to Rs.20 lac drawn on HDFC Bank, out of his Account No.50100021120875 in favour of the complainant Bank, with the assurance that the same would be honoured whenever presented for collection of payment. However, when the said cheque was presented by the complainant for collection of payment as per banking procedure and practice with HDFC Bank Bathinda, the same was returned with memo dated 14.06.2016 with the remarks "Funds Insufficient". Thereafter, complainant got a legal notice dated 16.06.2016 issued against the accused through registered post, intimating him about the dishonour of the cheque, in question, and calling upon him to make the payment of the cheque within a period of 15 days from the receipt of the notice, which was supposed to be received by the accused on 19.6.2016, but the accused failed to make any payment. Accordingly, the complainant brought the complaint against the accused under Section 138 of the Act and Section 420 of the Indian Penal Code with the prayer that accused be prosecuted and punished in accordance with law.

3. On the basis of the preliminary evidence led by the complainant, the learned trial Court summoned the accused to face trial for the commission of offence under Section 138 of the Act, vide order dated 16.7.2016.

4. On appearance, the accused was served with a notice under Section 138 of the Act on 16.1.2017, to which he pleaded not guilty and claimed to be tried.

5. In order to substantiate the contents of the notice, complainant bank got examined its Assistant Manager Jagpartap Singh as CW-1 and thereafter, closed the evidence.

6. After closure of evidence of the complainant, statement of accused Jagpal Singh, under Section 313 of the Code of Criminal Procedure was recorded, wherein all the incriminating evidence appearing against him, was put to him, to which he denied the allegations levelled against him and pleaded his innocence and false implication. He took the defence plea that he has been falsely implicated by the complainant by forging and fabricating the documents. He had never issued the alleged cheque in favour of the complainant Bank.

7. Though the accused opted to lead evidence in his defence, but closed his evidence without examining any witness in his support.

8. After hearing the respective contentions of both the sides and having gone through the record, the Court of first instance convicted the appellant-accused, as enumerated above.

9. Aggrieved there from, the appellant has come up in appeal, with a prayer that it be accepted, impugned judgment under appeal be set-aside and that he be acquitted of the notice served upon him.

10. Notice of the appeal was given to the respondent-complainant, who was represented by a counsel. Record of learned trial Court was requisitioned and received.

11. I have heard the learned counsel appearing on behalf of the respective parties through video conferencing and have minutely gone through the evidence available on the file of the learned trial Court.

12. During the pendency of the present appeal, certain subsequent events have taken place, as the appellant-accused has entered into a compromise with the respondent-complainant Bank and the respective statements of the parties were recorded in this regard. On 10.8.2020, Shri Japneet Kapil, Legal Officer of the respondent Bank suffered a statement, recorded separately, that the bank has compromised the matter with appellant Jagpal Singh and that as per the compromise, the bank has received the settled amount of Rs.26 lac from the appellant against the cheque, in question, and that now nothing remains due towards the appellant and that the Bank has given No Due Certificate to the appellant. He further stated that he has been authorized by the bank to state here that the Bank has no objection in case the impugned Judgment of conviction and order of sentence passed against the appellant is set-aside. Appellant Jagpal Singh also suffered a statement in the Court that during the pendency of the appeal, the matter has been amicably settled with the respondent Bank and that as per the compromise he has deposited the settled amount of Rs.26 lac with the Bank after arranging the same from his near and dears and that now nothing is due towards him. He further stated that he is a poor person and has deposited the settled amount with great difficulty after arranging the same from his near and dears and that he is not in a position to deposit compounding fee i.e.

15% of the cheque amount and requested for reducing the same. Both the parties prayed for permission to compound the offence.

13. Learned counsel appearing on behalf of the respective parties stated that the settlement was arrived at willingly and without any force. It is also stated by learned counsel appearing on behalf of the respondent-complainant Bank that the respondent-complainant Bank has received the amount and is fully satisfied. In view of the settlement arrived, it is requested by the learned counsel appearing on behalf of the appellant-accused that since the dispute has been settled and settlement is outcome of the volition of the parties, as such, the offence may be permitted to be compounded. However, in view of the decision of the Hon'ble Supreme Court in **Damodar.S.Prabhu Vs. Sayed Babalal.H, 2010(5) SCC 663**, while compounding the offence, costs is required to be paid to the District Legal Services Authority by the appellant/accused. Since, the settlement is arrived at and the offence is sought to be compounded before this Court at the stage of appeal, as such, the amount of costs to be paid to District Legal Services Authority is 15% of the amount of the cheque in question.

14. When the appellant is called upon to pay the said costs i.e. 15% out of the cheque amount of Rs.20 lac and on this aspect, the appellant submitted that he is a poor person and has deposited the settled amount with great difficulty after arranging the same from his near and dears and that he is not in a position to pay the compounding fee i.e. 15% of the cheque amount and requested to reduce the same.

15. I have considered the submissions. The Hon'ble Supreme Court in **Damodar.S.Prabhu** (supra) has held as follows:-

“That graded scheme for imposing the costs is a means to encourage the compounding at the earlier stage of litigation. In the status quo, valuable time of the Court is spent on the trial of these cases and parties are not liable to pay any Court fee since the proceedings are governed by Code of Criminal Procedure, even though, the impact of the offence is largely confined to the various parties. Even though, the imposition of the costs by competent Court is matter of discretion, scale of costs has been suggested in the interest of uniformity. **The competent Court can of-course reduce the costs in regard to the specific facts and circumstances of the case while recording the reason in writing for such variances.**

*(Emphasis supplied)*

16. Thus, from the perusal of the judicial report of **Damodar.S.Prabhu** (supra), it is clear that the Court can reduce the costs with regard to the specific facts and circumstances of the case and therefore, in view of the statement of the appellant-accused, this Court may further inquire from the appellant-accused about his social standing and to ascertain his capacity to pay the costs. The appellant stated that he is a poor person and has deposited the settled amount with great difficulty after arranging from his near and dears and that he is not in a position to pay the penalty/compounding fee.

17. Having considered the submissions and from the inquiries about his financial condition and considering the statement of the appellant, this Court is satisfied that the appellant-accused hails from the

lower strata of society and having regarded to his income which according to him is insufficient even to meet day to day life expenses, it would be harsh and unjust to compel him to pay 15% of the cheque amount of Rs.20 lac towards the costs and accordingly the compounding fee is reduced to Rs.25,000/- and he is directed to deposit the same in the office of District Legal Services Authority, Bathinda. The appellant has deposited Rs.25,000/- in the office of District Legal Services Authority, Bathinda vide receipt No.1891419 dated 24.8.2020 and produced the receipt qua the same on the file.

18. Since, parties to the present appeal have compromised the matter and that the appellant has fully discharged his debt liability, taking into consideration the provisions of Section 147 of the Negotiable Instruments Act, in the judgment of this Court, there is no reason to refuse the compromise between the parties by compounding the offence. Accordingly, the offence is compounded and this Court, therefore, dispose of the appeal on the basis of settlement arrived at between the parties, and for the foregoing reasons, the appeal deserves to be allowed and accordingly, the same is allowed by holding that since the matter has been compromised between the parties and the cheque amount, in dispute, has been paid by the appellant-accused to the respondent-complainant Bank, the appellant-accused is entitled to be acquitted. The judgment of conviction and order of sentence recorded by the learned trial Magistrate is set aside and the appellant-accused is acquitted of the notice served

upon him, subject to the deposit of Rs.25,000/- as costs in the office of District Legal Services Authority, Bathinda.

Record of trial Court be returned along with copy of this Judgment and the appeal file be consigned to the Record Room.

Pronounced.  
August 24, 2020.  
Sanjeev,EA.

**(KAMALJIT LAMBA),  
SESSIONS JUDGE,  
BATHINDA.  
(UID No.PB0055).**