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

**CRM-49344-2024 IN/AND
CRR-2260-2024(O&M)
Date of decision: 15.02.2025**

M/S Swaranlabh Commodity Brokers Pvt. Ltd.
through its Directors and others

...Petitioners

Versus

Manju Bala Saarsar

....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Ms. Satinder Kaur, Advocate for applicant-petitioners.

Ms. Amarinder Kaur, Advocate for the respondent.

MAHABIR SINGH SINDHU, J.

CRM-49344-2024

Application under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C') for placing on record certified copies of judgments of appellate Court bearing CIS No.CRA 508/2018, dated 26.10.2018 and trial Court R/C No.COMA No.876/2016 dated 13.04.2018 as Annxures P-1 and P-2, respectively.

For the reasons mentioned in the application, same is allowed as prayed for subject to all just exceptions. P-1 and P-2 are taken on record. Registry to tag the same at appropriate place.

Main case

Present revision petition has been filed for setting aside the impugned judgment of conviction and order of sentence dated 13.04.2018



passed by learned Judicial Magistrate First Class, Bathinda in complaint case bearing No.123 dated 13.04.2016 under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), whereby petitioners were sentenced to undergo rigorous imprisonment for period of two years and to pay compensation jointly and severally to the tune of cheque amount i.e. Rs.10,00,000/- alongwith interest @ 9% per annum from the date of issuance of cheque in question; and judgment dated 26.10.2018 passed by learned Additional Sessions Judge, Bathinda whereby appeal filed against the aforesaid judgment of conviction and order on sentence dated 13.04.2018, was dismissed.

2. The facts of the case as recorded in the judgment dated 26.10.2018 passed by learned Additional Sessions Judge, Bathinda, are recapitulated as under:-

“ Concisely, the facts of the present complaint are that accused no.1 was a registered company and accused no. 2 and 3 were its Directors. The accused persons approached the complainant and told her that they had opened a company under the name and style as M/s SCBL Commodity & Forex and accused assured the complainant to deposit money in their company and get better interest on the same, as per assurance of accused the complainant gave Rs.10,00,000/- to the accused to deposit the same to their company. But the accused neither pay any interest to the complainant on the above amount nor returned the amount of Rs.10,00,000/- to the complainant. To discharge of their liability, accused issued post dated cheque No.340566 dated 05.03.2016 for Rs.10,00,000/- drawn out of Swaranlabh Commodity Broker Pvt. Ltd. account No.911020056883744 drawn on Axis Bank Ltd, Bathinda and all the accused assured the complainant that the said cheque will be duly honoured when the same is presented for encashment by complainant and as per the assurance of accused, the complainant received the said cheque. Believing assurance



of accused, the complainant presented the said cheque for encashment to her banker Union Bank of India, NFL, Bathinda on dated 8.03.2016 and banker of the complainant forwarded the said cheque to their banker Axis Bank Ltd, Bathinda, for encashment but the said cheque was dishonoured vide their cheque returned memo dated 8.03.2016 with remarks "Account Closed". Before issuance of cheque in question the accused had full knowledge that they have closed their account and unable to honour the cheque in question and accused had closed the account as such the intention of the accused from the very beginning was to cheat and defraud the complainant and as such accused had issued the cheque and as such accused have committed fraud and cheated complainant. Accused have made themselves liable under Section 138 of NI Act read with Section 420 IPC according to which besides criminal liability is also liable to be burdened with the double of the cheque amount as penalty. The complainant on dated 18.03.2016 got issued legal notice through registered AD by his counsel Sh. Baljeet Singh Dhalla Advocate, Bathinda intimating the accused person about the dishonour of the cheque and requesting them to make the payment of the cheque amount within the period of 15 days from the receipt of the notice, failing which criminal proceedings would be initiated against the accused persons and the same has been deemed to be delivered on 22.03.2016 but the accused did not make the payment of cheque in question. In the end, prayer has been made to summon and punish the accused accordingly."

3. Contends that petitioners were involved in commercial transactions with various persons and dispute had arisen on account of dishonour of different cheques issued by the petitioners. Further contends that parties have now arrived at settlement before the Mediation and Conciliation Centre of this Court and report of the Mediator has been received in this regard.



Also contends that permission may be granted to compound the offence as contemplated under Section 147 of the NI Act. Again contends that petitioners have already undergone sentence of more than 10 years in these different cases; facing litigation for the last about 11 years; they are now penniless and not in a position to pay any costs.

4. Learned counsel for the respondent acknowledged the factum of settlement and he has no objection, if the offence is compounded.

5. Heard both sides and perused the paper-book.

6. It transpires that parties went through various stages of litigation before the matter has reached to this Court by way of present revision petition. Now, petitioners have entered into settlement with the respondent and seeking to set aside their conviction recorded by both the Courts below on the basis of terms agreed between the parties before the Mediator. Still further, respondent has not opposed the prayer of the petitioners; rather acknowledged the factum of settlement.

7. Hon'ble the Supreme Court in 'Damodar S.Prabhu Vs. Sayed Babalal H.' 2010(5) SCC 663, while dealing with the matter regarding compounding of offence punishable under Section 138 of NI Act, issued certain guidelines and relevant part of Para No. 21 reads as under:-

“ 21.....

The guidelines

(i) *In the circumstances, it is proposed as follows:-*

(a)

(b)

(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.*



.....”

It was further observed by Hon’ble the Supreme Court in Para No. 25 that competent Court can reduce the costs with regard to specific facts and circumstances of the case and relevant observations in this regard reads as under:-

“ 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.”

8. In the present case, there are certain mitigating circumstances for reduction of the costs and which would be as under:-

- (i) Petitioners have already undergone actual sentence for a period of more than 10 years in different cases;*
- (ii) They are facing protracted litigation for the past 11 years; And*
- (iii) Petitioners have no means to pay the costs.*

9. In view of the above, this Court deems it appropriate to allow the compounding of offence and to set aside the conviction of petitioner Nos. 2 & 3 imposed in the impugned judgments dated 13.04.2018 and 26.10.2018 (*ibid*) and to reduce the costs to Rs.5,000/-.

10. Consequently, petition is allowed; impugned judgments dated 13.04.2018 and 26.10.2018 (*ibid*) passed by both the Courts below are set aside, subject to costs of Rs.5,000/- and petitioner Nos. 2 & 3 stands acquitted.

11. Costs shall be deposited with Punjab State Legal Services Authority within a period of 08 weeks from today.



12. Bail bonds and surety bonds of petitioner Nos. 2 & 3 stand discharged and they be released from custody, if not required in any other case.

Pending application(s), if any, shall also stand disposed off.

15.02.2025

Harish Kumar

**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>