

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

[S. B. : HON'BLE MR. JUSTICE VIVEK RUSIA]

Criminal Revision No.3198/2021

Bhagirath S/o Shyama Dhangar,
Aged – 45 years, Occupation – Labour,
R/o – Nayapura, Ward No.16,
Pinjara Mohalla, Village Dehri,
Tehsil Kukshi, Distt. Dhar (M.P.)

- Applicant

V e r s u s

Firoz S/o Kamaluddin Multani,
Aged – 32 years, Occupation – Agriculturist,
R/o – Village Dehri, Tehsil Kukshi,
District Dhar (M.P.)

- Respondent

Shri Rakesh Pal, learned counsel for the applicant.

Shri Neeraj Saraf, learned counsel for the respondent.

Indore, dated 03/12/2021

Present revision has been filed against judgment dated 14/08/2019 passed by Judicial Magistrate First Class, Kukshi, Distt. Dhar, whereby applicant has been convicted under Section 138 of Negotiable Instruments Act, 1881 and sentenced him to under 06 months rigorous imprisonment with fine of Rs.1,62,350/-. Against the aforesaid order, he preferred a Criminal Appeal No.37/2019 before the II Additional Sessions Judge, Kukshi, Distt. Dhar and *vide* judgment dated 13/11/2021 appellate Court has dismissed the appeal confirming the aforesaid conviction, sentence and fine. Hence, the present revision before this Court.

Present revision is filed along with a compromise deed and according to which entire amount of Rs.1,62,350/- has been paid by

way of cheque. Learned counsel for the applicant submits that cheque has been encashed and the complainant has received the amount. 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.

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 apply. 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

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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.”

In view of the aforesaid paragraph, the applicant and the complainant are entering into a compromise before this Court in a revision, hence, the applicant is liable to pay 15% of the cheque amount by way of cost to be deposited with the “State Legal Services Authority”.

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

With the aforesaid, revision stands disposed of.

Certified copy as per rules.

(VIVEK RUSIA)
J U D G E

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