



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

**CRR-784-2024 (O & M)
Date of decision: 26.03.2025**

MAHIPAL

...PETITIONER

V/S

AMIT KUMAR AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashok Kumar Khunger, Advocate with
 Mr. R.P. Daaria, Advocate for the petitioner.

 Mr. Rakesh Gupta, Advocate for respondent No.1.

 Mr. Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against judgment dated 09.04.2024 passed by learned Sessions Judge, Ambala, whereby judgment of conviction dated 30.11.2019 and order of sentence dated 04.12.2019 passed by learned Judicial Magistrate Ist Class, Naraingarh have been upheld in case stemming from complaint bearing CIS No.NACT-188 of 2015 titled as '*Amit Kumar vs. Mahipal*', filed under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'NI Act'), and all the subsequent proceedings arising therefrom.

2. Brief facts of the present case are that the petitioner had borrowed an amount of Rs.1,35,000/- from the respondent No.1 on 10.01.2014. Thereafter on 16.01.2015, he further borrowed an amount of Rs.2,00,000/- with the assurance that he would return the said amount. On 16.01.2015, the petitioner also executed a writing in presence of marginal witnesses



acknowledging the loan amount. In discharge of the said liability, he issued two post-dated cheques bearing Nos.197245 and 197246 for an amount of Rs.3,35,000/- upto 16.07.2015 drawn on Haryana Gramin Bank, Patvi, in favour of the complainant. When the said cheques were presented for their encashment, the same were dishonoured vide return memo dated 22.09.2015 with remarks "Funds Insufficient". Thereafter, the complainant served a legal notice dated 07.10.2015 upon the petitioner, however, he did not pay the amount. Hence, the complaint.

3. After appreciating the evidence available on record, the learned trial Court convicted and sentenced the petitioner vide judgment dated 30.11.2019 and order dated 04.12.2019. Aggrieved by the same, the petitioner approached the learned lower Appellate Court, but his appeal was dismissed vide judgment dated 09.04.2024. Hence, the petitioner has approached this Court by way of filing present petition.

4. Learned counsel for the petitioner submits that the petitioner was convicted under Section 138 of NI Act and was awarded simple imprisonment for a period of 06 months.

5. Learned counsel further submits at the time of filing of appeal, he had already paid 20% of the cheque amount i.e. Rs.67,000/-. Further, he has deposited a demand draft for an amount of Rs.2,68,000/- in the Registry of this



Court. He furthermore submits that the petitioner is further ready to pay an amount of Rs.1 lakh to compensate respondent No.1 and settle the dispute.

6. Learned counsel for respondent No.1 submits that he has obtained necessary instructions from his client i.e. respondent No.1 that he is ready to receive the demand draft of Rs.1 lakh along with Rs.2,68,000/- already deposited in the Registry of this Court towards full and final settlement. Further, respondent No.1 has no objection in case, the offence under Section 138 of NI Act be compounded and the petitioner be acquitted of the notice of accusation framed against him.

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance. The demand draft of Rs.1 lakh dated 18.03.2025 has been handed over to learned counsel for respondent No.1 in the Court today itself. A copy thereof has been retained on the file. Registry is directed to tag the same at appropriate place.

8. It is settled law that the proceedings initiated under Section 138 of the NI Act are quasi-criminal in nature and the object and purpose of this enactment is to provide a compensatory mechanism for expeditious recovery of money as opposed to punishing the accused. A two Judge Bench of the Hon'ble Supreme Court in *R. Vijayan Vs. Baby (2012) 1 SCC 260* has considered the said issue and come to the conclusion that punishing the offender is secondary concern.

9. The amendment carried out in the year 2002 in the NI Act intended to make the nature of offence under Section 138 of the NI Act as a civil wrong while making it compoundable. A two Judge Bench of the Hon'ble Supreme Court in *Meters and Instruments Private Limited and*



another Vs. Kanchan Mehta (2018) 1 SCC 560, speaking through Justice

A.K. Goel has held as under:-

“7. This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions’ cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 payee and credibility of business transactions suffers a setback. At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 amendment specifically made it compoundable..... xxxx xxxx xxxx

18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.

18.3. Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.”

10. A two Judge Bench of the Hon’ble Supreme Court in ***JIK Industries Limited and others Vs. Amar Lal V. Jumani and another (2012) 3 SCC 255*** has examined the issue whether for compounding of an offence, consent of aggrieved party is required and speaking through Justice Asok Kumar Ganguli, following was held:-

“82. A perusal of Section 320 makes it clear that the provisions contained in Section 320 and the various sub-sections is a code by itself relating to compounding of offence. It provides for the various parameters and procedures and guidelines in the matter of compounding. If this Court upholds the contention of the appellant that as a result of incorporation of Section 147 in the NI Act, the entire gamut of procedure of Section 320 of the Code are made inapplicable to compounding of an offence under the NI Act, in that case the compounding of offence under the NI Act will be left totally unguided or uncontrolled. Such an interpretation apart from being an absurd or



unreasonable one will also be contrary to the provisions of Section 4(2) of the Code, which has been discussed above. There is no other statutory procedure for compounding of offence under the NI Act. Therefore, Section 147 of the NI Act must be reasonably construed to mean that as a result of the said section the offences under the NI Act are made compoundable, but the main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be wished away nor can the same be substituted by virtue of Section 147 of the NI Act.”

11. Consequently, in view of the above discussion and the compromise, the present petition is allowed and consequently, the offence under Section 138 of NI Act is compounded and the judgment of conviction and order of sentence dated 30.11.2019/04.12.2019 passed against the petitioner by learned Judicial Magistrate Ist Class, Naraingarh as well as impugned judgment dated 09.04.2024 passed by learned Sessions Judge, Ambala are hereby set aside along with all subsequent proceedings arising therefrom. The petitioner is acquitted of the notice of accusation issued against him and his bail bonds and surety bonds stand discharged.

12. Registry is directed to reimburse the amount deposited by the petitioner in favour of respondent No.1 against a proper receipt.

13. Pending miscellaneous application(s), if any, also stand(s) disposed of.

March 26, 2025
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |