

2025:PHHC:011355



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

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**CRR 1920 of 2018 (O&M)
Date of Decision: 17.01.2025**

Harnek Singh

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Gurcharan Dass, Advcoate for the petitioner.
Mr. M.S. Bajwa, DAG, Punjab.
Mr. Hardip Singh, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

CRR 1920 of 2018

1. The present revision petition has been preferred against the impugned judgment dated 02.05.2018 passed by the Court of Additional Sessions Judge, Fatehgarh Sahib and the judgment of conviction and order of sentence dated 31.01.2017 passed by the Court of Judicial Magistrate 1st Class, Fatehgarh Sahib, whereby, the petitioner was held guilty for the commission of the offence punishable under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and was sentenced to undergo simple imprisonment for a period of one year and to pay a compensation of Rs. 10,00,000/- to the complainant, alongwith default stipulation.

2. Vide order dated 28.05.2019 passed by this Court, the revision was admitted for hearing.

3. During the pendency of the present petition, the petitioner has filed an application (CRM 26 of 2025) under Section 147 of the Act for grant of permission to compound the offence under Section 138 of the Act with the respondent No. 2 and to set-aside the impugned judgments and order on the basis of the compromise between the parties.

4. Learned counsel for the petitioner contends that vide the impugned judgments and order, the petitioner was directed to pay a compensation of Rs.10,00,000/- to the respondent No. 2. In terms of the order dated 28.05.2019 passed by this Court, the petitioner had deposited two FDR's, i.e., (i) FDR bearing No. 38509587205 dated 07.06.2019 for an amount of Rs.3,00,000/- and (ii) FDR bearing No.3850958866 dated 07.06.2019 for an amount of Rs.3,00,000/- with the Registry of this Court. He further contends that even the respondent No. 2 had filed a Civil Suit No. 118 of 2017 against the petitioner for recovery of cheque amount alongwith interest and the suit was decreed vide judgment and decree dated 09.09.2022 passed by the Court of Ms. Deepti Goyal, Civil Judge (Senior Division), Fatehgarh Sahib. During the pendency of the civil appeal before the Court of District Judge, Fatehgarh Sahib, the petitioner and respondent No. 2 had compromised the matter on 05.09.2024 and the petitioner had handed over a demand draft bearing No. 681908 dated

03.09.2024 for a sum of Rs.11,16,000/- to respondent No. 2 in the Court. Learned counsel has also referred to the statement dated 05.09.2024 made by respondent No. 2 before the Court of District Judge, Fatehgarh Sahib, wherein, the respondent No. 2 had admitted the fact that he had received a sum of Rs.11,16,000/- from the petitioner. Respondent No.2 also stated that he has no objection, in case, the present petitioner is allowed to withdraw the amount of FDR bearing No. 38509587205 dated 07.06.2019 for an amount of Rs.3,00,000/- and FDR bearing No.3850958866 dated 07.06.2019 for an amount of Rs.3,00,000/- alongwith interest accrued on both the FDRs. Respondent No. 2 further stated that he would make a statement in favour of the petitioner before the Court. Finally, on 14.09.2024, the case was taken up before the National Lok Adalat and was settled. Apart from this, the respondent No. 2 had also filed an execution application bearing No. 398 of 2023 against the present petitioner for execution of judgment and decree dated 09.09.2022 passed by the Civil Court in Civil Suit No. CS-118 dated 08.03.2017. Even, the respondent No. 2 had withdrawn the execution petition on 05.09.2024.

5. Learned counsel for the petitioner further submits that respondent No. 2 has compromised the main case and he has no objection in case the offences are allowed to be compounded by this Court.

6. A short reply by way of an affidavit of respondent No. 2 has been filed before this Court and the same is taken on record.

7. Learned counsel appearing on behalf of respondent No. 2 submits that the respondent No. 2 has already received a sum of Rs. 11,16,000/- as full and final settlement amount and the offence may be ordered to be compounded.

8. I have heard learned counsel for the parties and perused the record carefully.

9. Learned counsel for the petitioner by relying upon **Cochin Hotels Co.(P) Ltd. and others Vs. Kairali Granites and others, 2006(2) RCR (Criminal) 333 and K. Subramanian Vs. R Rajathi represented by POAP Kaliappan, 2010 (1) RCR (Criminal) 184** has contended that even after finalization of judgment of conviction and order of sentence, petitioner can resort to compounding mechanism in terms of Section 147 of Negotiable Instruments Act as the offence related to dishonouring of cheque is having compensatory profile and it should be given precedence over punitive mechanism. Offence is almost a civil wrong which has been clothed in a criminal overtone, therefore, the priority should be given to compensatory mechanism.

10. Learned counsel also relied upon **Damodar S. Prabhu vs. Sayed Babalal H.(supra) Kaushalya Devi Massand vs. Roopkishore, 2011(2) RCR (Criminal) 298** and contended that the compromise in question would definitely go in long way to strengthen

the mutual relationship between the parties and would serve as an ever lasting tool in their favour. This exercise would be in consonance with the spirit of Section 147 of the Negotiable Instruments Act as endorsed in **Damodar S. Prabhu's case (supra)**.

11. For the reasons recorded hereinabove, I deem it appropriate to dispose of the present revision in terms of the compromise. Consequently, the impugned judgment dated 02.05.2018 passed by the Court of the Additional Sessions Judge, Fatehgarh Sahib and the judgment of conviction and order of sentence dated 31.01.2017 passed by the Court of Judicial Magistrate 1st Class, Fatehgarh Sahib are ordered to be set-aside.

12. So far as 15% of the cheque amount in terms of ratio of **Damodar S. Prabhu's case (supra)** is concerned, I am of the view that Section 147 of the Negotiable Instruments Act does not contain any guideline or procedure for proceeding with the compounding of the offences. Since scheme under Section 320 Cr.P.C cannot be followed in stricto sensu, therefore, Hon'ble Apex Court has also clarified that in order to discourage chronic litigants from delaying the composition of the offence under Section 138 of the Act, the scheme for imposing costs is considered to be a valid means to encourage compounding at the earliest. Valuable time of the Court is also involved in the trial of the cases and the parties are not liable to pay any Court fee in such proceedings, even though the impact of the

offence is largely confined to the private parties. The imposition of costs would be a matter of discretion of the Court.

13. In view of the fact that the parties have resolved their differences and have compromised the matter and also the fact that the petitioner is a poor person, I am of the view that 15% of the cheque amount towards cost(s) of litigation can be waived off in the interest of justice.

14. In view of the above discussion, the impugned judgments/order(s) are set aside and the parties are allowed to compound the offence in terms of Section 147 of the Act and petitioner is ordered to be acquitted of the notice of accusation.

CRM 27 of 2025

1. The applicant/petitioner has filed the present application under Section 528 of the BNSS with a prayer to direct the Registry of the Court to release the amount alongwith interest of two FDR's, i.e., (i) FDR bearing No. 38509587205 dated 07.06.2019 for an amount of Rs.3,00,000/- and (ii) FDR bearing No.3850958866 dated 07.06.2019 for an amount of Rs.3,00,000/- deposited by the petitioner in compliance of the order dated 28.05.2019 passed by this Court.

2. Learned counsel appearing on behalf of respondent No. 2 submits that he has no objection in case the above stated FDRs are ordered to be released in favour of the present applicant/petitioner as respondent No. 2 has already received a sum of Rs.11,16,000/- as a full and final settlement amount.

3. I have heard learned counsel for the parties and perused the record carefully.

4. Vide order dated 28.05.2019, this Court had directed the applicant/petitioner to create a fixed deposit of Rs. 6,00,000/- in the State Bank of India, High Court Branch, Chandigarh, in the name of the Registrar General of this Court and the said amount was to be handed over to a party, who would ultimately become successful after the decision of the revision petition. In the present case, now the parties have entered into a compromise and the petitioner has been ordered to be acquitted of the notice of accusation, in view of the compromise between the parties. Consequently, the applicant/petitioner is entitled to receive an amount of Rs.6,00,000/-, which was deposited in a fixed deposit, in the name of the Registrar General of this Court. The amount of Rs.6,00,000/-, which was deposited in the shape of two FDRs, i.e., (i) FDR bearing No. 38509587205 dated 07.06.2019 for an amount of Rs.3,00,000/- and (ii) FDR bearing No.3850958866 dated 07.06.2019 for an amount of Rs.3,00,000/-, alongwith interest, is ordered to be refunded to the applicant/petitioner, against receipt and after proper identification.

5. The application stands allowed.

17.01.2025

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No