

2025:PHHC:053776



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

**CRR-2571-2024 (O&M)
DECIDED ON: 24.04.2025**

ASHOK KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. B.S. Mamli, Advocate
 for the petitioner.

 Mr. S.S. Pannu, Addl. AG, Haryana.

 Mr. Satish Sharma, Advocate
 for respondent No.2.

SANDEEP MOUDGIL, J

1. The present revision petition has been preferred against judgment dated 12.11.2024 passed by Addl. Sessions Judge, Fatehabad whereby, the appeal preferred against the judgment of conviction dated 10.02.2023 and order of sentence dated 13.02.2023 passed by Judicial Magistrate Ist Class, Fatehabad, vide which the petitioner was convicted and sentenced to undergo a simple imprisonment for a period of one year under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'Act of 1881'), is dismissed and the complainant was awarded compensation to the tune of Rs.2,40,000/-; in default of payment thereof within a period of two months then shall be recovered as per provision of Section 421 Cr.P.C.

2. On perusal file, it is evident that a compromise has been effected between the parties, as the entire cheque amount stands paid to the complainant and

on that account counsel for the petitioner submits that he does not want to challenge his conviction on merits.

3. The petitioner(s) stands convicted under Sections 138 of Act of 1881 vide judgment of conviction dated 10.02.2023 and vide order of sentence dated 13.02.2023 passed by Judicial Magistrate Ist Class, Fatehabad, he was sentenced to undergo SI for a period of one year for commission of offence under Section 138 of Act of 1881 and the appeal preferred against the afore-said judgment of conviction and order of sentence has been dismissed vide judgment dated 12.11.2024 passed by Addl. Sessions Judge, Fatehabad.

4. The petitioner has annexed with the present petition an affidavit dated 31.01.2025. The relevant extract of the affidavit reads as under:-

“3 That now the accused Ashok Kumar has reached a settlement with the complainant bank in respect of the above case and now the accused Ashok Kumar has paid the above amount of Rs.2,40,000/- to the complainant and the complainant bank has no objection, if the appeal of the accused Ashok Kumar accepted on the ground of compromise.

4. That the complainant does not want to take any action in this Court.”

5. The accused and complainant have amicably settled the matter between them in terms of the settlement dated 31.01.2025. A perusal of the documents reveal that the settlement has not been secured through coercion, threats, social boycotts, bribes, or other dubious means. The complainant has willingly consented to the nullification of criminal proceedings. There is no objection from the respondent in case present revision petitionis allowed.

6. Vide order dated 18.03.2025, parties were directed to appear before the trial Court for recording of their statements with regard to the compromise. In compliance of the order dated 18.03.2025, a report dated 21.03.2025 has been received from Civil Judge (Jr. Division)-cum-JMFC, Fatehabad wherein, it has been

categorically stated that both the parties have made their statements as per their own free will and without any pressure.

7. In the given facts, the occurrence does not affect public peace or tranquillity, moral turpitude or harm the social and moral fabric of the society or involve matters concerning public policy. The rejection of compromise may also lead to ill will. The pendency of trial affects career and happiness. There is nothing on the record to *prima facie* consider the accused as an unscrupulous, incorrigible, and professional offender. The purpose of criminal jurisprudence is reformatory in nature and to work to bring peace to family, and society. The exercise of the inherent power for quashing the conviction, sentence and all previous proceedings are justified to secure the ends of justice.

8. At the very initial stage of hearing, a question was raised on behalf of the petitioner as to whether an offence under Section 138 of the Act of 1881, could be compounded under Section 147 of the said Act read with Section 320 Cr.P.C.

9. Since a specific power had been given to the parties to a proceeding under the Negotiable Instruments Act under Section 147 to compound the offence, there could be no reason as to why the same cannot be permitted even after conviction, which had been affirmed upto the High Court.

10. Moreover, in order to facilitate settlement of disputes, the legislature thought it fit to insert Section 147 by Amending Act 55 of 2002. Such amendment came into effect from 6 th February, 2003, and provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under the Act would be compoundable. In view of the non-obstante clause, the provisions of Section 147 were given an overriding effect over the Code and in view of the clear mandate given to the parties to compound an offence 5 under the Act, reference to Section 320 Cr.P.C. can be made for purposes of comparison only in order to understand the scope of Section 147 of the Negotiable

Instruments Act.

11. Reliance can be placed upon the judgment of Apex Court rendered in the case of **“O.P. Dholakia vs. State of Haryana & Anr.” [(2000) 1 SCC 762]**, wherein it was held that since the petitioner had already entered into a compromise with the complainant and the complainant had appeared through counsel and stated that the entire money had been received by him and he had no objection if the conviction already recorded under Section 138 of the Negotiable Instruments Act is set aside, the Hon’ble Judges thought it appropriate to grant permission, in the peculiar facts and circumstances of the case, to compound the offence. While doing so, this Court also indicated that necessarily the conviction and sentence under Section 138 of the Act stood annulled.

12. The said view has been consistently followed in the following cases; ***(1) Anil Kumar Haritwal & Anr. vs. Alka Gupta & Anr. [(2004) 4 SCC 366]; (2) B.C. Seshadri vs. B.N. Suryanarayana Rao [2004 (11) SCC 510]*** decided by a three Judge Bench; ***(3) G. Sivarajan vs. Little Flower Kuries & Enterprises Ltd. & Anr. [(2004) 11 SCC 400]; (4) Kishore Kumar vs. J.K. Corporation Ltd. [(2004) 13 SCC 494]; (5) Sailesh Shyam Parsekar vs. Baban [(2005) (4) SCC 162]; (6) K. Gyansagar vs. Ganesh Gupta & Anr. [(2005) 7 SCC 54]; (7) K.J.B.L. Rama Reddy vs. Annapurna Seeds & Anr. [(2005) 10 SCC 632]; (8) Sayeed Ishaque Menon vs. Ansari Naseer Ahmed [(2005) 12 SCC 140]; (9) Vinay Devanna Nayak vs. Ryot Sewa Sahakari Bank Ltd. [(2008) 2 SCC 305]***, wherein some of the earlier decisions have been noticed; and ***(10) Sudheer Kumar vs. Manakkandi M.K. Kunhiraman & Anr. [2008 (1) KLJ 203]***, which was a decision of a Division Bench of the Kerala High Court, wherein also the issue has been gone into in great detail.

13. The golden thread in all these decisions is that once a person is allowed to compound a case as provided for under Section 147 of the Negotiable

Instruments Act, the conviction under Section 138 of the said Act should also be set aside. In the case of Vinay Devanna Nayak (supra), the issue was raised and after taking note of the provisions of Section 320 Cr.P.C., it was held that since the matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of conviction and sentence recorded by all the courts were set aside and the appellant was acquitted of the charge leveled against him.

14. The object of Section 320 Cr.P.C., which would not in the strict sense of the term apply to a proceeding under the Act of 1881, gives the parties to the proceedings an opportunity to compound offences mentioned in the table contained in the said section, with or without the leave of the court, and also vests the court with jurisdiction to allow such compromise. By virtue of Sub-Section (8), the Legislature has taken one step further in vesting jurisdiction in the Court to also acquit the accused/convict of the offence on the same being allowed to be compounded. Inasmuch as, it is with a similar object in mind that Section 147 has been inserted into the Act of, 1881, by amendment, an analogy may be drawn as to the intention of the Legislature as expressed in Section 320(8) Cr.P.C., although, the same has not been expressly mentioned in the amended section to a proceeding under Section 147 of the aforesaid Act.

15. Apart from the above, this Court is further empowered under Article 142 of the Constitution to pass appropriate orders in line with Sub-Section (8) of Section 320 Cr.P.C. in an application under Section 147 of the aforesaid Act, in order to do justice to the parties.

16. As far as the non-obstante clause included in Section 147 of the Act of 1881 is concerned, the Act of 1881 being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to

compounding of offences.

17. A request has been made by the parties for compounding of offences after the proceedings had been concluded before the Appellate Court. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings.

18. Accordingly, I find no reason to reject the prayer made by the parties even in a proceeding under Article 136 of the Constitution and the same is accepted.

19. Since the parties have settled their disputes, in keeping with the spirit of Section 147 of the Act of 1881, this Court allows the parties to compound the offence, set aside the judgment of the courts below and acquit the petitioner of the charges against him.

20. The instant revision petition is allowed in the aforesaid terms.

21. Pending criminal misc. application(s), if any, shall also disposed off.

(SANDEEP MOUDGIL)
JUDGE

24.04.2025

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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*