



CRR-432-2025 (O&M)

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make the payment within the stipulated time. The petitioner was summoned under Section 138 of NI Act vide summoning order dated 22.01.2016. Vide judgment of conviction and order of sentence dated 05.07.2019, the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of 01 year and was further directed to pay compensation to the tune of Rs.3,45,000/-. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Additional Sessions Judge-I, Ferozepur, which was dismissed vide judgment dated 23.01.2025 and the learned Appellate Court upheld the judgment of conviction and confirmed the order of sentence.

On 03.04.2025, the following order was passed:-

'Mr. Rai Singh Chauhan, Advocate has put in appearance and filed his power of attorney on behalf of respondent No. 1. Same is taken on record. Be tagged at the appropriate place.

On the last date of hearing, learned counsel for petitioner has submitted that petitioner is ready to pay the entire amount of compensation in order to compound the offence under Section 138 of Negotiable Instruments Act, 1881.

Today, learned counsel for the petitioner has only brought a demand draft of Rs. 1,50,000/-.

Learned counsel for respondent No. 1 submits that on the last date of hearing, learned counsel for the petitioner has undertaken to pay the entire compensation amount and the demand draft of only Rs. 1,50,000/- cannot be accepted.

In view the above, the matter is adjourned to 21.04.2025 for seeking instructions form learned counsel for the petitioner as to whether petitioner is ready to pay the entire compensation amount or not.'

Today, learned counsel for the petitioner handed over two demand drafts bearing Nos.000042 and 000110 dated 19.03.2025 and 17.04.2025, amounting to Rs.1,50,000/- and Rs.1,95,000/-,respectively, drawn in favour of respondent No.1, to counsel for respondent No.1 in the Court today. Copies of the same have been placed on record and the Registry is directed to tag the same at an appropriate place in the file. He further relies upon the judgment passed



by the Hon'ble Supreme Court in *Ghanshyam Gautam and another vs. Usha Rani (since deceased) through LRs, 2024(1) CriCC 564* to contend that once the compromise has been effected and the settled amount has been received by the complainant, the offence under Section 138 of NI Act can be compounded.

Learned counsel for the complainant/respondent No.1 submits that the complainant/respondent No.1 has received the entire settled amount and nothing is due towards the petitioner and the complainant/respondent No.1 has no objection if the offence under Section 138 of NI Act is compounded and the petitioner is acquitted of the notice of accusation framed against him. He further submits that respondent No.1 undertakes to withdraw the execution petition in civil suit filed by him for the amount in question in terms of the settlement.

Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner-accused has paid the entire settled amount to counsel for the complainant/respondent No.1 by way of demand drafts in the Court today itself which shall further be handed over to the complainant/respondent No.1.

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. 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.

Moreover, 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.....

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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.”

Moreover, 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.”

Consequently, in view of the above discussion, the present revision petition are allowed. The judgment of conviction and the order of sentence dated 05.07.2019 passed by the learned Judicial Magistrate 1st Class, Ferozpur as well as impugned judgment dated 23.01.2025 passed by learned Additional Sessions Judge-I, Ferozpur, are hereby set aside. The petitioner is acquitted of the notice of accusation and his bail bonds and surety bonds also stand discharged. The petitioner is ordered to be released forthwith if not required in any other case.

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

(HARPREET SINGH BRAR)
JUDGE

21.04.2025

Neha

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