



218 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-32928-2024 (O&M)

Date of Decision: 07.07.2025

GURSEWAK SINGH

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. C.S. Singhal, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition filed under Section 482 of Cr.P.C. seeking quashing of order dated 29.07.2023 (Annexure P-3) whereby the petitioner has been declared as proclaimed offender and order dated 12.06.2024 (Annexure P-4) passed in case titled as *Tarlok Singh Vs. Gursewak Singh* under Section 138 of Negotiable Instruments Act, 1881 as the judgment of conviction dated 13.10.2015 was set aside by learned learned lower Appellate Court.

2. Learned counsel for the petitioner *inter alia* contends that petitioner was convicted by learned Chief Judicial Magistrate, Phillaur under Section 138 of Negotiable Instruments Act, 1881. The cheque amount involved in the controversy was of Rs. 44,000/-. The appeal filed by the petitioner was also dismissed by learned Additional Sessions Judge, Jalandhar. Thereafter, the petitioner approached this Court by filing CRR-4964-2015 and it was disposed of on 22.12.2015 vide the following order:

“The petitioner has been convicted in proceedings under Section 138 of the Negotiable Instruments Act by the trial Court as well as by the Appellate Court. The petitioner opted to evade appearance at the time of final decision in the appeal as such the appeal was decided in his absence. The amount of subject matter of the controversy is Rs.44000/-. As a rule, the petitioner cannot be heard unless and until he surrenders to custody by appearing before the Appellate Court. No indulgence can be shown as the petitioner is neither on bail nor he is in custody but in view of the offer given



by the counsel for the petitioner to compound the offence by paying the amount of the cheque alongwith reasonable cost, I deem it appropriate to grant him liberty to compound the offence as per the judgment in Damodar S. Prabhu Vs. Syed Babalal H., 2010 (2) RCR (Crl.) 851.

In view of the said offer, the indulgence can be shown by this Court in the exercise of inherent jurisdiction as per the observations made in Vivek Rai and another Vs. High Court of Jharkhand through Registrar General and others, 2015 (1) RCR (Crl.) 900. This petition is disposed of with a direction that petitioner will appear before the Appellate Court alongwith a bank draft of Rs.70000/- in the name of complainant Tarlok Singh which would include the amount of the cheque with cost of Rs.20000/- for unnecessary harassment caused to the complainant under Section 309 Explanation 2 Cr.P.C. and further cost as per the judgment in Damodar S. Prabhu's case (supra), within a period of 15 days. In case of petitioner's doing so, he will be released on bail on his furnishing bail bonds/ surety bonds to the satisfaction of the Appellate Court. It will be open to the petitioner to seek compounding of the offence. The Appellate Court after issuing notice to the complainant would permit compounding calculating any amount payable as per the judgment in Damodar S. Prabhu's case (supra) within a period of 15 days. The cost of Rs.20000/- has been imposed by this Court on the petitioner payable to the complainant.

Since this case has been decided in limine, it will be open to the complainant to approach this Court for review of the order in case the order is not acceptable to the complainant.

It is made clear that in case the petitioner does not appear before the Appellate Court within a period of 15 days, as directed hereinabove, this petition will be deemed to have been dismissed."

3. In compliance of aforesaid directions, the petitioner appeared before the learned lower Appellate Court and in terms of the settlement, paid Rs. 70,000/- to the complainant. He further refers to Annexure P-2 and submits that statement made by the complainant was duly recorded in the order dated 26.02.2016 passed by learned Additional Sessions Judge, Jalandhar, in which he has submitted that he has received Rs. 70,000/- in view of the settlement and in compliance of the directions passed by this Court in CRR-4964-2015 and the complainant further gave his No Objection with regard to acceptance of the appeal filed by the petitioner for his acquittal of the notice of accusation by compounding the offence under Section 138 of NI Act. On 26.02.2016, following order was passed by learned Additional Sessions Judge, Jalandhar:

"The respondent has already suffered the statement that he has independently considered and has accepted the offer given by the



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appellant/accused Gursewak Singh to pay an amount of Rs.70,000/- as settlement in view of the directions given by the Hon'ble High Court in CRR No. 4964 of 2015 dated 22.12.2015. He has also stated the has no objection if in view of the said settlement, the appeal is accepted and the appellant is acquitted of the charge by compounding the offence.

2. *I have carefully considered the submission made by the respondent/complainant alongwith his statement recorded in court and has satisfied myself that the respondent/complainant has agreed to offer with his free will. Admittedly, the respondent/complainant has already received the original demand draft bearing No.95900 dated 05.01.2016 for an amount of Rs.70,000/- in his name drawn on State Bank of Patiala from the appellant Gursewak Singh in lieu of the full and final settlement of the dispute. The appellant is also ordered to deposit the compounding fee of Rs. 7000/-, which has been deposited by him against proper receipt.*

3. *In view of the totality of the circumstances and in compliance of the direction made by Hon'ble High Court in CRR No. 4964 of 2015, the offence under section 138 of Negotiable of Instrument act is hereby compounded. The judgment of conviction dated 13.10.2015 is set aside. Accused stands acquitted of the charge. File be consigned to the record room alongwith copy of this order after due compliance.”*

4. Learned counsel for the petitioner submits that in spite of the fact that the petitioner has been acquitted of the notice of accusation by learned lower Appellate Court, in compliance of the directions issued by this Court in CRR-4964-2015, learned Chief Judicial Magistrate, Jalandhar had declared the petitioner as proclaimed person and as such, the impugned orders i.e. 29.07.2023 (Annexure P-3) and 12.06.2024 (Annexure P-4) passed by learned CJM, Jalandhar are contrary to the actual facts of the case.

5. Learned State counsel could not controvert the fact that petitioner was acquitted of notice of accusation by learned Additional Sessions Judge, Jalandhar vide order dated 26.02.2016 and on the basis of statement suffered by the complainant, offence under Section 138 of NI Act was compounded. Thus, the impugned orders i.e. Annexures P-3 and P-4 passed by learned



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Chief Judicial Magistrate, Jalandhar are contrary to the actual facts of the case.

6. Having heard learned counsel for the parties and after going through the case file with their able assistance, this Court has come to the conclusion that perusal of records clearly indicates that impugned orders dated 29.07.2023(Annexure P-3) and 12.06.2024 (Annexure P-4) passed by learned Chief Judicial Magistrate, Jalandhar are passed on a wrong premise that the petitioner is absconding. Rather the petitioner has already been acquitted by learned Additional Sessions Judge, Jalandhar vide order dated 26.02.2016.

7. As such, the present petition is allowed and the impugned orders dated 29.07.2023 (Annexure P-3) and 12.06.2024 (Annexure P-4) vide which the petitioner has been declared as proclaimed person and further his arrest has been sought in this regard, passed by learned Chief Judicial Magistrate, Jalandhar are hereby set aside, being not sustainable in the eyes of law.

07.07.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No