



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

232

CRR-233-2025 (O&M)
Date of decision: 28.02.2025

Gagandeep

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Deepak Kumar, Advocate for respondent No.2.

HARPREET SINGH BRAR J. (Oral)

1. This revision petition has been preferred for setting-aside the judgment of conviction and order of sentence dated 16.11.2022 passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide which the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the NI Act') and sentenced to undergo simple imprisonment for a period of 06 months and was directed to pay a compensation of Rs.5.00 lacs to the respondent/complainant within a period of one month along with default mechanism and for setting-aside the judgment dated 04.01.2025, passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, vide which the appeal preferred by the petitioner against the aforesaid judgment of conviction and order of sentence, has been dismissed.

2. The brief facts of the case are that the complainant had filed a complaint under Section 138 of the NI Act against the



petitioner/accused, by levelling the allegations that the petitioner/accused borrowed a sum of Rs.5,00,000/- from him for purchasing a plot and in discharge of his legal liability, the petitioner/accused issued the cheque bearing No.000004 dated 10.10.2016 amounting to Rs.5,00,000/- drawn on Bank of Baroda, Sadhaura Branch in his favour with the assurance that the said cheque would be encashed, as and when presented in the bank. However, when the complainant presented the said cheque for encashment through his banker 'Bank of Baroda, Farakpur', the same was dis-honoured with the remarks 'Funds Insufficient' vide memo dated 07.11.2016 and despite serving a legal notice dated 15.11.2016, the petitioner/accused failed to pay the cheque amount within the stipulated period and thereafter, a complaint under Section 138 of the NI Act, has been preferred by the complainant.

3. Learned counsel for the petitioner submits that the appeal preferred by the petitioner against the judgment of conviction and order of sentence, has been dismissed by the learned Lower Appellate Court on 04.01.2025 and thereafter, on 18.01.2025, the matter has been compromised between the parties and on 28.01.2025, this Court has passed the following order:-

“Learned counsel for the petitioner inter alia contends that after the passing of the impugned judgment of conviction and order of sentence, the petitioner has preferred an appeal and the learned lower Appellate Court has dismissed the same vide judgment dated 04.01.2025.



Thereafter, on 18.01.2025, a compromise has been effected between the parties as discernible from Annexure A-1.

Notice of motion for 28.02.2025.

At this stage, on the asking of the Court, Ms. Geeta Sharma, DAG, Haryana accepts notice on behalf of respondent No.1-State.

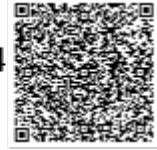
Mr. Deepak Kumar, Advocate accepts notice for respondent No.2 and files his power of attorney which is taken on record and submits that the provision contained under Section 138 of the Negotiable Instruments Act is compoundable in nature and respondent No.2 has received the entire settled amount and he has no objection in case, the present petition is allowed and the impugned judgments of conviction and order of sentence are set aside as the petitioner be acquitted of the notice of accusation.

Service is complete.

In view of the above, the parties are directed to appear before the jurisdictional Court within a period of two weeks from today to get their statements recorded regarding compromise (Annexure A-1) and after recording their statements, jurisdictional Court is directed to send report regarding the genuineness of compromise.

A copy of the order be sent to learned trial Court/Illaq Magistrate through fax for compliance.”

4. To support his contention, learned counsel for the petitioner has relied 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 the NI Act can be compounded.



5. Learned counsel for respondent/complainant affirms the factum of compromise and that the respondent has received the amount owed. He also submits that he has no objection if the offence under Section 138 of the NI Act is compounded and the petitioner is acquitted of the notice of accusation.

6. I have heard learned counsel for the parties and perused the paperbook with their able assistance.

7. 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.

8. 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.”

9. 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.”

10. In compliance of the order dated 28.01.2025, a report has already been received from the concerned jurisdictional Court that the compromise between the parties is genuine and arrived at without any pressure or coercion from anyone.

11. Consequently, in view of the discussions made hereinabove and considering the fact that the matter stood compromised between the parties, the present revision petition is allowed. The judgment of conviction and the order of sentence dated 16.11.2022 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri as well as judgment dated 04.01.2025 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, are hereby set aside. The petitioner is acquitted of the notice of accusation. He be released from the custody, if not required in any other case.

(HARPREET SINGH BRAR)
JUDGE

28.02.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No