



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

252

CRR-1378-2018 (O&M)
Date of decision: 19.05.2025

Gian Parkash @ Gian Chand

....Petitioner

Versus

Dayawati

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tarun Yadav, Advocate
with Mr. Ashutosh Sharma, Advocate
for the petitioner.

Mr. Balraj Gujjar, Advocate
for the respondent.

HARPREET SINGH BRAR J. (Oral)

1. This revision petition has been preferred for setting-aside the judgment of conviction dated 27.03.2017 and order of sentence dated 03.04.2017 passed by the learned Judicial Magistrate Ist Class, Faridabad, 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 to the tune of Rs.52,50,000/- to the respondent/complainant within a period of two months along with default mechanism. Further prayer has been made for setting-aside the judgment dated 02.04.2018, passed by learned Sessions Judge, Faridabad, vide which the appeal preferred by the petitioner against the aforesaid judgment of conviction and order of sentence, has been modified and the petitioner was directed to undergo rigorous



imprisonment for a period of 01 year and to pay compensation amount to the tune of Rs.70,00,000/- i.e. double of the cheque amount to the complainant, within a period of 02 months, along with default mechanism.

2. The brief facts of the case are that Smt. Dayawati, the complainant, is the real sister of the petitioner, Gian Parkash @ Gian Chand. They inherited equal shares of their late father's agricultural land measuring 146 Kanals 9 Marlas in Village Bhainsrawali, District Faridabad. It is alleged that Gian Chand fraudulently obtained a decree dated 20.09.2007 in Civil Suit No.711 of 2007 by impersonating a woman as Dayawati, intending to usurp her share of the property. Dayawati challenged the decree through civil and criminal proceedings, during which a compromise was effected between the parties wherein the petitioner agreed to pay ₹38,00,000/-, (₹3,00,000/- in cash and ₹35,00,000/- via Cheque No.088938 dated 20.05.2013 drawn on Bank of India), in exchange of relinquishing her share. Relying on this, the complainant withdrew her civil suit on 10.01.2013. However upon presentation, the cheque issued by the petitioner was dishonoured due to "insufficient funds". Thereafter, a legal notice dated 04.07.2013 was issued to Gian Chand and his wife, Smt. Resho, who responded by claiming that the amount of ₹35,00,000/- had already been paid in cash. Consequently, Dayawati filed the present complaint under Section 138 of the Negotiable Instruments Act.



3. On 03.05.2025, the following order was passed by this Court:-

“Learned senior counsel representing the petitioner submits that the petitioner has already paid an amount of Rs.17,50,000/- and is ready to pay balance amount of Rs.22,50,000/-.

Learned counsel for the respondent submits that the respondent is ready to accept the offer made by the petitioner and he has no objection to compounding of the offences under Section 138 of the Negotiable Instruments Act, 1881, and the petitioner may be acquitted of the notice of the acquisition.

In view of the above, learned senior counsel representing the petitioner seeks a short accommodation to file appropriate application for compounding of offence and to bring a demand draft of Rs.22,50,000/- out of the total settled amount of Rs.40,00,000/-.

List on 19.05.2025.”

4. In compliance thereof, learned counsel for the petitioner has handed over a demand draft of Rs.22,50,000/- to learned counsel for the respondent in the Court itself. A photocopy of the said demand draft is taken on record as Mark X.

5. Learned counsel for the petitioner, *inter alia*, contends that during the pendency of the present petition, a compromise has already been effected between the parties. He 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.

6. Learned counsel for respondent/complainant affirms the factum of compromise and submits that the dispute arose between the petitioner (brother) and respondent (sister). He submits that the petitioner has paid the entire amount, in question i.e. Rs.40,00,000/-, to the respondent and as such, nothing is due towards the petitioner and the respondent has no objection in case the offence under Section 138 of the NI Act is compounded and the petitioner is acquitted of notice of accusation.

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

8. 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.

9. 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.”

10. 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.”

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 dated 27.03.2017 and the order of sentence dated 03.04.2017 passed by learned Judicial Magistrate Ist Class, Faridabad as well as



impugned judgment dated 02.04.2018 passed by learned Sessions Judge, Faridabad, are hereby set aside. The petitioner is acquitted of notice of accusation and his bail bonds and surety bonds also stand discharged.

12. Pending miscellaneous application, if any, also stands disposed of.

(HARPREET SINGH BRAR)
JUDGE

19.05.2025
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No