



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

**CRR-534-2019 (O & M)
Date of decision: 14.02.2025**

SATISH KUMAR

...PETITIONER

V/S

SIKSHA DEVI

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ved Parkash, Advocate and
 Mr. Ram Niwas, Advocate for the petitioner.

 Mr. Gaurav Bakshi, Advocate for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

CRM-1299-2021

1. The instant application has been filed for pre-ponement of the date of hearing of the main case.
2. Notice in the instant application was issued on 21.01.2021.
3. Learned counsel for the petitioner submits that the present application has been rendered infructuous as the main case is listed today itself. However, he refers to the compromise deed (Annexure A-1) annexed with the present application and submits that a compromise has been effected between the parties. Further, the entire amount as per the compromise deed (Annexure A-1), has been paid to the respondent and nothing remains due on part of the petitioner. Learned counsel further refers to affidavit of the respondent (Annexure A-2) and submits that the respondent has no objection, if the petitioner is discharged in the present matter.
4. In view of the above, present application dismissed as the same is rendered infructuous.



MAIN CASE

1. The instant revision petition has been preferred against the impugned judgment of conviction dated 06.04.2016 and the order of sentence dated 07.04.2016 passed against the petitioner by learned Sub Divisional Judicial Magistrate, Samalkha, in the case stemming from a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as 'NI Act') as well as the impugned judgment dated 14.02.2019 passed by learned Sessions Judge, Panipat, whereby, the appeal filed by the petitioner against the judgment of conviction dated 06.04.2016 has been dismissed. The petitioner was sentenced as under :-

Name of the convict	Convict under Section	Sentence
Satish Kumar	138 NI Act	RI for 02 years with compensation of double amount of cheque to the complainant.

2. Briefly, the facts, as alleged, are that the respondent/complainant and petitioner/accused had friendly relations, therefore, on 20.08.2013, the petitioner borrowed Rs.2,80,000/- from the complainant to pay an installment for a flat in Sushant City, Karnal. He promised to pay the same back along with interest @ 12% per annum within a month. On being asked, to discharge his legal liability, the petitioner had issued a cheque bearing no.277823 on 22.10.2013 for Rs.2,80,000/-, drawn on Corporation Bank, Branch Karnal. He assured the respondent that cheque would be encashed on its presentation. However, when the complainant/respondent presented the cheque, the same was dishonoured vide return memo dated 17.12.2013 with remarks "Funds Insufficient". Thereafter, the respondent/complainant, through his counsel, served a legal notice dated 03.02.2014, calling upon the petitioner/accused to make the payment of loan amount with interest, within the period of



limitation. Despite service, the petitioner/accused did not make the payment, hence the present complaint.

3. After appreciating the evidence available on record, the learned trial Court convicted and sentenced the petitioner vide judgment and order dated 06/07.04.2016. Aggrieved by the same, the petitioner approached the learned lower Appellate Court, but his appeal was dismissed vide judgment dated 14.02.2019.

4. Mr. Ved Parkash, Advocate has put in appearance on behalf of the petitioner, with an endorsement of no objection and filed his *vakalatnama* which is taken on record. Registry is directed to tag the same at the appropriate place. Learned counsel for the petitioner submits that during the pendency of the present petition, a compromise has been effected between the parties. He refers to the compromise deed (Annexure A-1) and affidavit of the respondent (Annexure A-2) and further submits that the petitioner has paid the entire amount to the respondent, which has also been accepted by the complainant/respondent as full and final settlement.

5. Further, learned counsel 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.

6. Learned counsel for the respondent affirms the factum of compromise and submits that the respondent has received the settled amount as per the compromise and nothing is due towards the petitioner. Further, the offence under section 138 of NI Act is a compoundable offence and the respondent has no objection, in case, the offence under Section 138 of NI Act



be compounded and the petitioner be acquitted of the notice of accusation framed against him.

7. I have heard learned counsel for the parties and perused the paper-book 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. A two Judge Bench of 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. 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..... xxxx xxxx xxxx

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. 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 above discussion and the compromise deed dated 12.06.2020 (Annexure A-1), the present revision petition is allowed and the judgment of conviction and the order of sentence dated 06/07.04.2016 passed against the petitioner by learned Sub Divisional Judicial Magistrate, Samalkha as well as impugned judgment dated

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14.02.2019 passed by learned Sessions Judge, Panipat are hereby set aside.

The petitioner is acquitted of the notice of accusation issued against him and his bail bonds and surety bonds stand discharged.

12. Pending application(s), if any, stands disposed of accordingly.

February 14, 2025
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |