

2025:PHHC:016157



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

312 two cases

CRR-2998-2017 (O&M)

Date of Decision: 29.01.2025

(1) Jatinder Gambhir ...Petitioner
Versus
The State of Punjab and another ... Respondents

CRR 3000 of 2017 (O&M)

(2) Jatinder Gambhir ...Petitioner
Versus
The State of Punjab and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. B.B.S. Sobti, Advocate, for the petitioners (in both petitions).

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

Mr. Rohit Sood, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. This judgment shall dispose of two criminal revision petitions, i.e., **CRR-2998-2017** titled as “**Jatinder Gambhir Vs. the State of Punjab and another**” and **CRR-3000 of 2017** titled as “**Jatinder Gambhir Vs. The State of Punjab and another**”, as both petitions involve similar questions of fact and law and also pertained to the litigation between the same parties. However, for the sake of

facility of reference, the facts have been borrowed from Criminal Revision Petition 2998 of 2017.

2. M/s P.K.F. Finance Limited, respondent No. 2, through its authorized representative had filed a complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') against the present petitioner in the Court of Judicial Magistrate 1st Class, Jalandhar by alleging that the petitioner/accused had taken a loan under the loan agreement dated 24.07.2007, for the purchase of one medical equipment and in discharge of her liability towards the said loan, the petitioner/accused had issued two cheques bearing No. 077966 dated 16.12.2009 for a sum of Rs. 6,18,000/- and Cheque bearing No. 331392 dated 16.12.2009 for a sum of Rs.6,00,000/-, both drawn on State Bank of India, Link Road, Ludhiana, in favour of the respondent No. 2/complainant with an assurance that the same shall be honoured on presentation. However, when the cheques were presented with the bank, the same were returned back dishonoured vide separate memos and the reasons for dishonour was mentioned as "insufficient funds". Thereafter, a statutory notice was served on the petitioner under Section 138 of the Act, calling upon the petitioner to make the payment within stipulated period, but the petitioner failed to make the payment.

3. After holding trial, the Court of Judicial Magistrate 1st Class, Jalandhar, convicted the petitioner for the offence punishable under Section 138 of the Act and sentenced her to undergo rigorous

imprisonment for period of one year and to pay a fine of Rs. 5000/- alongwith default stipulation. However, the judgment and order passed by the trial Court were challenged by the petitioner before the Sessions Court, Jalandhar. Vide the impugned order dated 11.08.2017, the Court of Additional Sessions Judge, Jalandhar, dismissed the appeal filed by the present petitioner. Challenging both the impugned judgments, the petitioner had filed the revision petition before this Court.

4. During the pendency of the present petition before this Court, the petitioner filed an application under Section 147 of the Act read with Section 528 of B.N.S.S. with a prayer to permit the parties to compound the offences under Section 138 of the Act and to acquit the petitioner of the notice of accusation. It was stated that the matter was referred to the Mediation and Conciliation Centre of this Court and the entire amount of Rs. 22,18,000/- as full and final payment was paid to respondent No. 2. Even, the respondent No. 2/complainant had admitted the factum of the compromise and receipt of the amount from the present petitioner. Thus, it was prayed that since the parties had amicably resolved all their disputes, the petitioner may be permitted to compound the offence with the respondent No. 2/complainant and may be acquitted.

5. An affidavit has been filed by the respondent No.2, admitting the factum of compromise. As per the said affidavit filed by respondent No. 2, the respondent No. 2 has no objection if the offence

is ordered to be compounded by this Court and the petitioner is ordered to be acquitted of the notice of accusation on the basis of the compromise.

6. Learned counsel for the petitioner by relying upon **Cochin Hotels Co.(P) Ltd. and others Vs. Kairali Granites and others, 2006(2) RCR (Criminal) 333** and **K. Subramanian Vs. R. Rajathi represented by POAP Kaliappan, 2010 (1) RCR (Criminal) 184** contended that even after finalization of judgment of conviction and order of sentence, petitioner can resort to compounding mechanism in terms of Section 147 of Negotiable Instruments Act as the offence related to dishonouring of cheque is having compensatory profile and it should be given precedence over punitive mechanism. Offence is almost a civil wrong which has been clothed in a criminal overtone, therefore, the priority should be given to compensatory mechanism.

7. Learned counsel also relied upon **Damodar S. Prabhu vs. Sayed Babalal H.(supra) Kaushalya Devi Massand vs. Roopkishore, 2011(2) RCR (Criminal) 298** and contended that the compromise in question would definitely go in long way to strengthen the mutual relationship between the parties and would serve as an ever lasting tool in their favour. This exercise would be in consonance with the spirit of Section 147 of the Negotiable Instruments Act as endorsed in **Damodar S. Prabhu's case (supra)**.

8. For the reasons recorded hereinabove, I deem it appropriate to dispose of the present revision petitions in terms of

compromise and consequently the impugned judgment of conviction and order of sentence dated 20.02.2015 passed by the Court of Judicial Magistrate 1st Class, Jalandhar and impugned judgment dated 11.08.2017 passed by the Court of Additional Sessions Judge, Jalandhar are set aside.

9. So far as 15% of the cheque amount in terms of ratio of **Damodar S. Prabhu's case (supra)** is concerned, I am of the view that Section 147 of the Negotiable Instruments Act does not contain any guideline or procedure for proceeding with the compounding of the offences. Since scheme under Section 320 Cr.P.C cannot be followed in stricto sensu, therefore, Hon'ble Apex Court has also clarified that in order to discourage chronic litigants from delaying the composition of the offence under Section 138 of the Act, the scheme for imposing costs is considered to be a valid means to encourage compounding at the earliest. Valuable time of the Court is also involved in the trial of the cases and the parties are not liable to pay any Court fee in such proceedings, even though the impact of the offence is largely confined to the private parties. The imposition of costs would be a matter of discretion of the Court.

10. In view of the fact that the parties have resolved their differences and have compromised the matter and also the fact that the petitioner is a senior citizen and is unemployed and even her husband who is also a senior citizen had suffered a stroke and even do not have sufficient funds for the medical treatment of her husband, I

am of the view that 15% of the cheque amount towards cost(s) of litigation can be waived off in the interest of justice.

11. In view of the above discussion, the impugned judgments/order(s) are set aside and the parties are allowed to compound the offence in terms of Section 147 of the Act and petitioner is ordered to be acquitted of the notice of accusation.

12. All pending applications, if any, are disposed off, accordingly

29.01.2025

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No