

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

CRR-2404-2023 (O & M)
Date of decision: 21.02.2024

M/S SONU TEXTILE AND OTHERS

...PETITIONERS

V/S

M/S SHREE GANESH TEXTILES AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sagar Aggarwal, Advocate
for the petitioners.

Mr. Gautam Kumar, Advocate
for respondent Nos.1 to 3.

Mr. Vikas Bharadwaj, AAG Haryana.

HARPREET SINGH BRAR J. (ORAL)

CRM-47741-2023

The instant application is filed under Section 147 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act') read with Section 482 Cr.P.C. seeking compounding of offence punishable under Section 138 of the NI Act on the ground that the matter has been compromised between the parties and no amount remains due between them.

Learned counsel for the applicant/petitioners submits that with the intervention of the respectable, the matter has been compromised between the parties and a prayer for compounding is made in view of the ratio of law laid down in **Damodar S. Prabhu Versus Sayad Babulal (2010) 5 SCC 663**.

Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the following order was passed on 09.11.2023 :

“Let the parties now appear before the Trial Court/Illaqa Magistrate on 06.12.2023 or any other date convenient to the Court for recording their statements with regard to compromise. The Trial court/Illaqa Magistrate is directed to record the statements of both the parties to its satisfaction to know the genuineness of the compromise and to assess that the statements are not the result of any pressure or coercion in any manner. The Trial Court/Illaqa Magistrate is also directed to send a report along with statements of the parties with regard to validity or otherwise of the compromise effected between the parties. It shall also be reported whether petitioners have been declared Proclaimed Offenders in this case or not.”

In compliance of the above order, a report has 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. Therefore, in view of **Damodar S. Prabhu (supra)**, the instant application is allowed.

CRR-2404-2023

1. The present revision petition is filed against the judgment dated 12.09.2023 passed by learned Additional Sessions Judge, Panipat, whereby the appeal against judgment of conviction dated 11.01.2023 and order of sentence dated 16.01.2023 passed by learned Judicial Magistrate Ist Class, Panipat in criminal complaint bearing CIS no. NACT/1048/2018 dated 08.05.2018 filed under Section 138 of the NI Act, was dismissed.

2. Briefly, the facts are that respondents no.1-complainant is a proprietorship firm engaged in business of woollen and handloom products and respondents no. 2 is the proprietor and respondents no. 3 is the manager of the said firm who jointly look after the day-to-day affairs of the firm. Petitioner no. 1 is a proprietorship firm and petitioner no. 2 is its proprietor. The accused-

petitioners have been in business with the complainant-respondents since the last 4-5 years. The petitioners made certain purchases from the respondents firm against which invoices were duly generated and as on 25.11.2017, the petitioners owed Rs. 31,97,035/- to the respondents. To discharge the said liability, the petitioners issued cheques bearing no. 792676, 792677, 792678 all dated 20.03.2018 for an amount of Rs. 10,00,000/- each. However, on presentation for encashment all three cheques were dishonoured vide memo dated 20.03.2018 with remarks- 'insufficient funds.' Thereafter, two legal notices dated 21.03.2018 and 06.04.2018 were served upon the petitioners calling upon them to make the payment. However, the petitioners failed to make the requisite payment and the instant complaint was filed.

3. Learned counsel for the parties are *ad idem* that the matter has been compromised and nothing remains due towards the respondents any longer. In this regard, statements were recorded by learned Judicial Magistrate Ist Class, Panipat and a report dated 02.01.2024 was received regarding genuineness of the compromise. A perusal of the report indicates that respondents have received Rs. 45,00,000/- and have no objection in case the present revision petition is allowed and complaint is quashed.

4. 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 a secondary concern.

5. 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.”

6. A two Judge Bench of the Hon'ble Supreme Court in **JK Industries Limited and others Vs. Amar Lal V. Juman 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.”

7. In **M/s Meters and Instruments Pvt. Ltd. (supra)**, the Hon’ble Supreme Court has held that in the interest of justice, on being satisfied that the complainant has been adequately compensated, the proceedings under Section 138 of the NI Act can be quashed even in the absence of consent of the complainant.

8. In view of the above discussion, the present petition is allowed. The offence under Section 138 of the NI Act is compounded and the petitioners stands acquitted of the notice of accusation presented against him. The impugned judgments of conviction and order of sentence are set aside. Bail bonds and surety bonds of the petitioners also stand discharged.

February 21, 2024
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(HARPREET SINGH BRAR)
JUDGE

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