105 + 243 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRR-2933-2023(O&M)**
Date of Decision: 06.02.2024

MANJIT KAUR

......Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.......Respondents

2. **CRR-2942-2023(O&M)**
Date of Decision: 06.02.2024

MANJIT KAUR

......Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.......Respondents

3. **CRR-2954-2023(O&M)**
Date of Decision: 06.02.2024

MANJIT KAUR

......Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.......Respondents

4. **CRR-2959-2023(O&M)**
Date of Decision: 06.02.2024

MANJIT KAUR

......Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.......Respondents

5. **CRR-2960-2023(O&M)**
Date of Decision: 06.02.2024

MANJIT KAUR

......Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.......Respondents

6. **CRR-2947-2023(O&M)**
Date of Decision: 06.02.2024

MANJIT KAUR

......Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.......Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rahul Makkar, Advocate and Mr. Sachin Saini, Advocate
for the petitioner

Mr. Prateek Gupta and Mr. Pranjal Chaudhary, Advocates
for respondent no.2

Mr. Vikas Bhardwaj, AAG, Haryana

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HARPREET SINGH BRAR, J. (ORAL)

1. This common order of mine shall dispose of all the above-mentioned petitions. As these petitions arise out of the same transaction, therefore, for the sake of brevity, the facts are taken from CRR-2933-2023.

2. The above-mentioned revision petitions have been preferred against the impugned judgment of conviction and the order of sentence dated 30.07.2022 passed against the petitioner by learned Judicial Magistrate Ist Class, Faridabad in complaint case No. NACT/2263/2018 dated 26.03.2018 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as NI Act) as well as the impugned judgement dated 31.07.2023 passed learned Additional Sessions Judge, Faridabad, whereby, the appeal filed by the petitioner against the judgement of conviction dated 30.07.2022 has been dismissed. The petitioner was sentenced as under: -

Sr No.	Complaint before Ld. JMIC, Faridabad./	Appeals (dismissed), all titled 'Manjit Kaur	Sentence Awarded (Concurrent) S.I

		vs. M/s Ramji Steels'	
1.	NACT/1567/2018 Dated 21.02.2018	CRA-247-2022	One year with compensation of Rs.25,00,000/- with two months S.I in default thereof
2.	NACT/2265/2018 Dated 26.03.2018	CRA-248-2022	One year with compensation of Rs.16,00,000/- with two months S.I in default thereof
3.	NACT/1568/2018 Dated 21.02.2018	CRA-249-2022	Six months with compensation of Rs.15,00,000/- with two months S.I in default thereof
4.	NACT/2263/2018 Dated 26.03.2018	CRA-250-2022	Six months with compensation of Rs.12,00,000/- with two months S.I in default thereof
5.	NACT/2264/2018 Dated 26.03.2018	CRA-251-2022	Six months with compensation of Rs.12,00,000/- with two months S.I in default thereof
6.	NACT/1566/2018 Dated 21.02.2018	CRA-252-2022	Six months with compensation of Rs.9,00,000/- with two months S.I in default thereof

FACTUAL MATRIX

3. Facts, in brief, are that respondent no.2-complainant is a company engaged in the sale and purchase of iron/steel goods. The petitioner along with two other co-accused (later acquitted) is the partner in the accused partnership firm by the name 'M/s Klassic Industries', which placed various orders for

iron/steel goods. Respondent no.2 supplied the ordered goods to the petitioner. As per the account books maintained by respondent no.2, an amount of Rs.68,31,920/- was found to be due against the petitioner and her firm along with an earlier amount of Rs.64,54,635/-. Despite the receipt of goods, the petitioner and her firm failed to make requisite payments to respondent no.2. Thereupon, the petitioner and her partners issued two separate cheques bearing No.613219 dated 20.10.2017 for Rs.3,00,000/- and No.613220 dated 10.12.2017 for Rs.5,00,000/- in favour of respondent no.2 in order to discharge their legal liability. The said cheques were dishonoured vide memo(s) dated 29.01.2018 with remarks 'Funds Insufficient'. Consequently, respondent no.2-complainant issued a legal notice dated 15.02.2018 to the petitioner and her firm, calling upon them to pay the respective cheque amounts but the petitioner and other accused failed to make the said payment. Aggrieved, respondent no.2 preferred the above-mentioned complaints against the petitioner and other partners of the firm.

4. After preliminary evidence, the petitioner along with other accused was summoned to face trial vide order dated 26.03.2018. After their appearance, they were served with notice of accusation under Section 251 Cr.P.C on 22.05.2018 to which they pleaded not guilty and claimed trial.

5. Ultimately, the learned trial Court after appreciating the complete evidence on record, acquitted the other co-accused but convicted the present petitioner on grounds that the cheques were signed by her and she was also involved in day-to-day business of the accused firm.

CONTENTIONS

6. Learned counsel for the petitioner submits that a perusal of the application dated 10.02.2024 (CRM-5140-2024) submitted in this case for

compounding the offence in view of settlement would show that a one-time settlement to the tune of Rs.30,00,000/- with respect to the above-mentioned 6 cases has been affected between the petitioner and respondent no.2. The settlement deed has been reduced in writing on 29.01.2024. It is further submitted that the original settlement deed dated 29.01.2024 has been retained by Mr. Tushar Bhatia, proprietor of respondent no.2, so he has annexed copy of the same as Annexure A-1. It is requested that the offence under Section 138 of Negotiable Instruments Act may be compounded accordingly. A similar application has been moved in other cases as well as for compounding the offence.

7. It is further submitted by the learned counsel for the petitioner that due to financial crunch, the settlement amount has been collected from the relatives of the petitioner and as per the aforementioned settlement deed, the settlement amount was agreed to be paid in form of a demand draft on the next date of hearing, i.e., today. The original demand drafts with following details are handed over to the learned counsel for respondent no.2:-

Bank Draft No.	Date	Amount	Issuing Bank
848087	01.01.2024	Rs. 22,00,000/-	IDFC First Bank
318911	23.01.2024	Rs. 1,80,000/-	Union Bank
318912	23.01.2024	Rs. 2,00,000/-	Union Bank
848084	2024	Rs. 4,20,000/-	IDFC First Bank

8. Learned state counsel submits that the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, as such, the petitioner does not deserve any leniency.

9. Learned counsel representing respondents No. 2 affirms the factum of compromise and affirms the fact that he has received the complete settlement amount by way of above-mentioned bank drafts. He further submits

that he has no objection in case the offences in all the above-mentioned petitions are compounded.

OBSERVATION & ANALYSIS

10. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

11. 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.

12. 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."

13. 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.”

14. 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.

15. As per the custody certificate dated 20.12.2023 on record, details of custody period of the petitioner are tabulated as under: -

Petitioner- Manjit Kaur:

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	-
2.	Custody after conviction	02.08.2023-20.12.2023	4 months 19 days
3.	Parole availed	-	-
4.	Actual custody period after conviction	-	-
5.	Actual undergone period	-	4 months 19 days
6.	Earned remission	-	2 days
7.	**Total sentence including**		**4 months 21 days**

	remission		

CONCLUSION

16. Consequently, in view of the above discussion and settlement deed dated 29.01.2024, the above-mentioned revision petitions are allowed and the petitioner is acquitted of the notice of accusation and her bail bonds and surety bonds also stand discharged. Petitioner-Manjit Kaur is stated to be in jail in all the cases. So, she is ordered to be released immediately, if her custody is not required in connection with any other case.

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

(HARPREET SINGH BRAR)
06.02.2024 **JUDGE**
Manisha

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*