



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

921 CRIMINAL WRIT PETITION NO. 818 OF 2024

Ms. Varsha W/o Tukaram Joshi,
Age: 53 years, Occupation: Household,
R/o. Nageshwar Wadi, Ch. Sambhajnagar.
Through her Power of Attorney,
Mr. Tukaram S/o Devidasrao Joshi,
Age: 62 years, Occu: Business,
R/o. Nageshwar Wadi, Ch. Sambhajnagar **....PETITIONER**

VERSUS

1. Mr. Sandeep S/o Jugalkishor Karwa,
Age: 52 years, Occu; Business,
R/o. Plot No.39, "Suraj", Ahinsanagar,
Ch. Sambhajnagar.
2. The State Of Maharashtra **....RESPONDENT**

....
Mr. Shripad S. Kulkarni, Advocate for the Petitioner
Mr. Aditya N. Sikchi, Advocate for Respondent No.1
Mr. S. M. Ganachari, APP for the Respondent No.2-State
....

CORAM : Y. G. KHOBRADE, J.

DATE : 13.02.2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of both the parties, heard finally at the stage of admission.
2. By the present Petition, the Petitioners have challenged the Judgment and order dated 20.12.2022 passed by the learned

Additional Sessions Judge, Court No.8 Aurangabad in Criminal Revision No. 228 of 2022, thereby affirmed the order dated 21.07.2022 below Exh.76 in SCC No. 4979 of 2015 passed by the learned JMFC Court No.11, Aurangabad.

3. The Petitioner is the original accused and Respondent is the original Complainant in SCC No. 4979 of 2015. For the sake of brevity, I would like to refer parties to the present Petition in their original capacity as “Complainant” and “Accused”.

4. The Complainant filed a Criminal complaint SCC No. 4979 of 2015 for the offence punishable under Section 138 of the N.I. Act alleging that, on 06.06.2015, the Accused issued two cheques Nos. 031165 and 031166 amount of Rs.1,00,000/- (One lakh) each in his favour drawn on Bank of Baroda, Aurangabad for discharging legal liabilities. Accordingly, he deposited both the cheques with his banker HDFC Bank Padampura Station Road, Aurangabad, however, both the cheques returned unpaid with bank memo dated 16.06.2015 on ground of “Insufficient Fund”. Thereafter, on 25.06.2015, he issued mandatory notice under Section 138 of the N.I. Act and called upon the accused to comply said notice within 15 days but the accused did not claim said notice. Therefore, he prayed for awarding of punishment u/s 138 of N.I. Act. Against the Accused.

5. On 03.08.2015, the learned JMFC passed an order in SCC No.4979 Of 2015 and issued process against the accused for the offence punishable under Section 138 of the N.I. Act.

6. Needless to say that, after service of summons, the accused appeared before the learned JMFC Court No.11, Aurangabad. On 03.01.2022, the Complainant and Accused have filed Joint Pursis and prayed for referring the matter before the Mediator for settlement. On the same day, the accused also filed Exh.69 an Application with prayer for referring the matter to the Mediator. The Accused undertook that, he shall pay amount of Rs.4,00,000/-(Four Lakh) towards final settlement to the Complainant before 31.03.2022. The Complainant also agreed to accept said amount towards final settlement. Therefore, the learned JMFC passed an order below Exh. 69 observing that, considering nature of the complaint and offence, the matter shall be referred to the Mediator as per the willingness of both parties.

7. On 31.03.2022, the accused and the Complainant filed Exhibit-73 Joint Pursis and stated that, as per settlement, the accused agreed to pay Rs.4,00,000/- (Four Lakhs) to the Complainant but on that day, the accused has only paid Rs.1,00,000/- (One Lakh) through Phone-Pay and agreed to pay remaining amount by the next date i.e., 20.04.2022. Again, on 20.04.2022, an amount of Rs.1,00,000/- (One

Lakh) was paid to the Complainant through demand draft No. 000260 drawn on HDFC Bank. The accused had sought time to pay remaining amount of Rs.2,00,000/- (Two Lakhs) till next date. Thereafter, on 05.05.2022, the accused and Complainant filed joint pursis Exhibit-75 stating that, he has handed over demand draft dated 04.05.2022 to the amount of Rs.1,58,000/- and D.D. dated 05.05.2022 for amount of Rs.17,000/- and remaining amount of Rs.25,000/- paid in cash, i.e. Total amount of Rs.4,00,000/- (Four Lakhs) paid by the accused to the Complainant. The Complainant put her endorsement about receipt of cash of Rs.25,000/- at pursis Exhibit-75. Thereafter, the accused filed Exhibit-76 an Application for disposal of the Complaint and acquittal on account of making payment of settlement of Rs.4,00,000/- (Four Lakhs) to the complainant towards full and final. The Complainant filed say and resisted said application on ground that, there is delay while making payment as per terms of compromise and he has suffered lot and spent huge time to attend the Court proceeding.

8. On 21.07.2022, the learned JMFC passed an order considering the law laid down in case of ***Damodar S. Prabhu Vs. Sayed Babalal, 2010 (4) AIR Bom R 58*** and held that, the accused failed to obey the guidelines laid down in cited case and has not deposited compounding charges. So also, in pursis nowhere mentioned that, the

Complainant would withdraw the matter after receiving the amount.

9. Being aggrieved by the said order, the accused filed a Criminal Revision Application No.228 of 2022. On 20.12.2022, the learned Revisional Court passed the impugned order and dismissed the Revision on the ground that, although the Accused and Complainant settled the dispute, the accused did not adhere to the terms of settlement within time frame.

10. The learned counsel for the Respondent/Complainant canvassed in vehemence that, even after receipt of compensation with cheque amount, unless the Complainant agreed to compound the offence and to withdraw the Complaint, the Court cannot compel the respondent/accused to compound the offence and to withdraw the complaint.

11. In support of these submissions, the learned counsel for the Respondent/Complainant relied on *Raj Reddy Kallem Vs. The State of Haryana and Others MANU/SC/0409/2024 = (2024) 8 SCC 588*, wherein the Hon'ble Supreme Court considered the case of *Damodar S. Prabhu* cited (supra) as well as the case of *K. M. Ibrahim Vs. K. P. Mohammed and Another, (2010) 1 SCC 798* and *O.P. Dholakia Vs. State of Haryana and Another, (2000)1 SCC 762*. and held thus:

“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.

*In our opinion, Kanchan Mehta (supra) nowhere contemplates that 'compounding' can be done without the 'consent of the parties and even the above observation of Kanchan Mehta (supra) giving discretion to the trial court to 'close the proceedings and discharge the Accused', by reading Section 258¹ of Code of Criminal Procedure, has been held to be 'not a good law' by this Court in the subsequent 5 judges bench judgment in *Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, MANU/SC/0284/2021: (2021) 16 SCC 1162.**

*All the same, in this particular given case even though the complainant has been duly compensated by the Accused yet the complainant does not agree for the compounding of the offence, the courts cannot compel the complainant to give 'consent' for compounding of the matter. It is also true that mere repayment of the amount cannot mean that the Appellant is absolved from the criminal liabilities Under Section 138 of the NI Act. But this case has some peculiar facts as well. In the present case, the Appellant has already been in jail for more than 1 year before being released on bail and has also compensated the complainant. Further, in compliance of the order dated 08.08.2023, the Appellant has deposited an additional amount of Rs. 10 lacs. There is no purpose now to keep the proceedings pending in appeal before the lower appellate court. Here, we would like to point out that quashing of a case is different from compounding. This Court in *JIK Industries Ltd? (Supra)* distinguished the quashing of case from compounding in the following words:*

Quashing of a case is different from compounding. In quashing the court applies it but in compounding it is primarily based on consent of the injured party. Therefore, the two cannot be equated.

In our opinion, if we allow the continuance of criminal appeals pending before Additional Sessions Judge against the Appellant's conviction then it would defeat all the efforts of this Court in the last year where this Court had monitored this matter and ensured that the complainant gets her money back.”

12. The learned counsel for the Respondent further relied on case of ***A. S. Pharma Pvt. Ltd. Vs. Nayati Medical Pvt. Ltd. And Others***

MANU/SC/0957/2024 = 2024 (3) Crimes 335(SC), wherein the Hon'ble Apex Court observed in Paragraph No.18 as under:

“18. In the context of the issues involved another aspect of the matter also requires consideration. The decision in Raj Reddy Kallem's case (supra), also stands on a similar footing inasmuch as the complainant therein was duly compensated by the Accused but the complainant did not agree for compounding the offence. After observing that, Courts could not compel the complainant to give consent for compounding the offence Under Section 138, N.I. Act, this Court in Raj Reddy Kallem's case (supra) took note of the peculiar factual situation obtained and invoked the power Under Section 142 of the Constitution of India to quash the proceeding pending against the Appellant-Accused Under Section 138, N.I. Act. True that in Raj Reddy Kallem's case it was despite the non- consent of the complainant-Respondent that the proceedings were quashed against the Appellant therein, interalia, taking note of the fact that the Accused therein had compensated the complainant and furthermore deposited the additional amount, as has been ordered by this Court. We have no doubt in holding that merely because taking into account such aspects and circumstances this Court 'quashed' the proceedings by invocation of the power Under Article 142 of the Constitution of India, cannot be a reason for 'compounding' an offence Under Section 138, N.I. Act, invoking the power Under Section 482, Code of Criminal Procedure and the power Under Section 147, N.I. Act, in the absence of consent of the complainant concerned in view of the decision referred hereinbefore. In this context, this is to be noted that the fact that this Court quashed the proceedings Under Section 138, N.I. Act, Invoking the power Under Article 142 of the Constitution of India can be no reason at all for High Courts to pass an order quashing proceeding Under Section 138, N.I. Act, on the similar lines as the power Under Article 142 of the Constitution of India is available only to the Supreme Court of India.”

13. He further relied on case of **Rajneesh Aggarwal Vs. Amit J. Bhalla MANU/SC/1462/2001 = AIR 2001 SC 518**, wherein the Hon'ble Supreme Court considered the questions and held that:

7. *Having regard to the contentions raised by the counsel for the parties, two questions really arise for our consideration:*

(1) *Was the High Court justified in coming to the conclusion that the drawer has not been duly served with notice for payment?*

(2) *Whether deposit of the entire amount covered by three cheques, while the matter is pending in this Court, would make any difference?*

8. *So far as the first question is concerned, it is no doubt true that all the three requirements under clauses (a), (b) and (c) must be complied with before the offence under Section 138 of the Negotiable Instruments Act, can be said to have been committed and Section 141 indicates as to who would be the persons, liable in the event the offence is committed by a company. The High Court itself on facts, has recorded the findings that conditions (a) and (b) under Section 138 having been duly complied with and, therefore, the only question is whether the conclusion of the High Court that condition (c) has not been complied with, can be said to be in accordance with law. Mere dishonour of a cheque would not raise to a cause of action unless the payee makes a demand in writing to the drawer of the cheque for the payment and the drawer fails to make the payment of the said amount of money to the payee. The cheques had been issued by M/s Bhalla Techtran Industries Limited, through its Director Shri Amit Bhalla. The appellant had issued notice to said Shri Amit J. Bhalla, Director of M/s Bhalla Techtran Industries Limited. Notwithstanding the service of the notice, the amount in question was not paid. The object of issuing notice indicating the factum of dishonour of the cheques is to give an opportunity to the drawer to make payment within 15 days, so that it will not be necessary for the payee to proceed against in any criminal action, even though the bank dishonoured the cheques. It is Amit Bhalla, who had signed the cheques as the Director of M/s Bhalla Techtran Industries Ltd. When the notice was issued to said Shri Amit Bhalla, Director of M/s Bhalla Techtran Industries Ltd., It was incumbent upon Shri Bhalla to see that the payments are made within the stipulated period of 15 days. It is not disputed that Shri Bhalla has not signed the cheques, nor is it disputed that Shri Bhalla was not the Director of the company. Bearing in mind the object of issuance of such notice, it must be held that the notices cannot be construed in a narrow technical way without examining the substance of the matter. We really fail to understand as to why the judgment of this court in Bilakchand Gyanchand Co., MANU/SC/0201/1999: 1999CriLJ3498: will have no application. In that case also criminal proceedings had been initiated against A Chinnaswami, who was the Managing Director of the company and the cheques in question had been signed by him. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court committed error in recording a finding that there was no notice to the drawer of the*

cheque, as required under Section 138 of the Negotiable Instruments Act. In our opinion, after the cheques were dishonoured by the bank the payee had served due notice and yet there was failure on the part of the accused to pay the money, who had signed the cheques, as the Director of the company. The impugned order of the High Court, therefore, is liable to be quashed.

9. *So far as the question of deposit of the money during the pendency of these appeals is concerned, we may state that in course of hearing the parties wanted to settle the matter in Court and it is in that connection, to prove the bona fide, the respondent deposited the amount covered under all the three cheques in the Court, but the complainant's counsel insisted that if there is going to be a settlement, then all the pending cases between the parties should be settled, which was, however not agreed to by the respondent and, therefore, the matter could not be settled. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the Court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of deposit of money in the Court or that an order of quashing of criminal proceeding, which is otherwise unsustainable in law, could be sustained because of the deposit of money in this Court. In this view of the matter, the so-called deposit of money by the respondent in this Court is of no consequence."*

14. Needless to say that, in case of ***Damodar S. Prabhu*** cited (supra), the Hon'ble Supreme Court held that, the offence punishable under Section 138 of N.I Act is compoundable at any stage of the matter even before the Supreme Court, however, while compounding or compromise of the offence under Section 138 following guidelines have been laid down which reads as follows:

THE GUIDELINES

(I) the circumstances, it is proposed as follows

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to (a) Thaised that he could make an application for compounding of

the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount

Let it also be clarified that any costs imposed in accordance with these guidelines should be deposited with the Legal Services Authority operating at the level of the Court before which compounding takes place. For instance, in case of compounding during the pendency of proceedings before a Magistrate's Court or a Court of Sessions, such costs should be deposited with the District Legal Services Authority. Likewise, costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with composition before the Supreme Court should be deposited with the National Legal Services Authority.

In paragraph No.17, the Hon'ble Supreme Court held that, even though the imposition of costs by the Competent Court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The Competent Court may, of course, reduce the costs in light of the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona-fide litigants should of course contest the proceedings to their logical end.

15. In *M/s New Win Export & Anr. -Vs- A. Subramaniam, [2024] 7 S.C.R. 1225 : 2024 INSC 535*, the Hon'ble Supreme Court considered the issue, whether the conviction under Section 138 of the Negotiable Instruments Act, 1881 can be quashed because of the parties have settled the dispute among themselves by entering into a settlement agreement. In this circumstance it is held that, the Appellants and Respondent-Complainant have entered into a settlement agreement dated 27.01.2024, therefore it is clear that, the parties have settled the dispute among themselves as per the agreement and the appellants have paid Rs.5,25,000 to the Respondent-Complainant, who had agreed to settle the dispute and paid the said amount. The complainant does not have any objection if the conviction of the appellants is set aside. The settlement agreement can be treated to be compounding of the offence, when the accused and complainant have reached a settlement permissible by law.

16. In case-in-hand, it prima facie appears that, the Complainant filed a Criminal complaint SCC No. 4979 of 2015 under Section 138 of the N.I. Act on ground of dishonoured of two cheques Nos. 031165 and 031166 amount of Rs.1,00,000/- (One lakh) each dated 06.06.2015. After service of summons, the Petitioner/Accused appeared before the learned Judicial Magistrate. It is not in dispute

that, on 31.03.2022, the accused and Complainant filed Exhibit-73 Joint Pursis and agreed to settle the dispute. It is a matter of record that, as per the settlement, the Petitioner / accused agreed to pay Rs.4,00,000/- (Four Lakhs) to the Complainant and paid Rs.1,00,000/- (One Lakh) through Phone-Pay and agreed to pay remaining amount by the next date i.e., 20.04.2022. Accordingly, on 20.04.2022, the Petitioner /accused paid Rs.1,00,000/- (One Lakh) to the Respondent / Complainant through demand draft No. 000260 drawn on HDFC Bank. No doubt, the petitioner/accused had sought time to pay remaining amount of Rs.2,00,000/-(Two Lakhs) till next date and the Respondent/complainant had consented for extension of further period. Thereafter, on 05.05.2022, the accused and Complainant filed joint pursis Exhibit-75 stating therein about handed over demand draft dated 04.05.2022 for Rs.1,58,000/- and D.D. dated 05.05.2022 for Rs.17,000/- and remaining amount of Rs.25,000/- paid in cash, i.e. Total amount of Rs.4,00,000/- (Four Lakhs). The Complainant put her endorsement at Pursis Exhibit-75 and acknowledged receipt of cash of Rs.25,000/-. Thereafter, the accused filed Exhibit-76 an Application for disposal of the Complaint and acquittal on account of making payment of settlement of Rs.4,00,000/- (Four Lakhs) to the complainant towards full and final. The Respondent/complainant has not disputed about settlement amount of Rs.4,00,000/- (Four lakhs) in lieu of dishonoured of two cheques of

Rs. 1 lac each as per Joint Pursis Exhibit-73.

17. No doubt, as per Pursis Exhibit-73, the accused failed to pay Rs.4,00,000/- on or before 31.03.2022 but said period was extended time to time with consent of the Respondent/Complainant. Ultimately, on 05.05.2022, the petitioner/accused paid entire amount to the Respondent/Complainant. Needless to say that, the petitioner has not filed specific application for compounding of offence u/s 138 of NI Act as provided under Sec. 320 of Cr.PC. read with Section 147 of N.I. Act but as per the law laid down in *M/s New Win Export & Anr.*, cited (supra), the settlement agreement can be treated to be compounding of the offence, when the accused and complainant have reached a settlement permissible by law. Since, the Petitioner/accused already paid amount of Rs. 4,00,000/- (Four Lakhs) i.e., double to the cheque amount, therefore, continuation of the Criminal Proceeding as against the Petitioner/accused would certainly amounts to abuse of process of law and no cause of action survives. Since, the Petitioner Accused compounded the offence prior to framing of the charge, therefore, as guidelines laid down in case of *Damodar S. Prabhu, cited supra*, the Petitioner accused is permitted to deposit 10% of both the cheques amount i.e., Rs.20,000/- towards compounding charges with the District Legal Services Authority, Aurangabad on or before 07.03.2025.

18. In view of the above discussion I am of the view that, the impugned order dated 20.12.2022 passed by the learned Revisional Court arising out of order dated 21.07.2022 passed by the learned JMFC Below Exhibit-76 in S.C.C. No.4979 of 2015 is hereby quashed and set aside. Resultantly, the complaint bearing S.C.C. No.4979 of 2015 pending on the file of learned JMFC, Aurangabad is hereby quashed and set aside. Accordingly, Rule is made absolute in above terms. No order as to costs.

[Y. G. KHOBRADE, J.]