

CRM-M-4002-2025
Date of decision: 25.03.2025

...PETITIONER

STATE OF HARYANA AND ANOTHER

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Harkesh Kumar, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

2. Brief facts of the present case are that the petitioner borrowed an amount of Rs.2,95,000/- from the respondent No.2 in the month of August, 2014. In discharge of the said liability, he issued a cheque bearing No.817331



dated 07.01.2015 for an amount of Rs.2,95,000/- drawn on Oriental Bank of Commerce, Karnal, in favour of the complainant. When the said cheque was presented for its encashment, the same was dishonoured vide return memos dated 09.01.2015, 21.01.2015 and 27.02.2015 with remarks "Funds Insufficient". Thereafter, the complainant served a legal notice dated 09.03.2015 upon the petitioner, however, he did not pay the amount. Hence, the complaint.

3. After appreciating the evidence available on record, the learned trial Court convicted and sentenced the petitioner vide judgment and order dated 12.08.2016. Aggrieved by the same, the petitioner approached the learned lower Appellate Court, but his appeal was dismissed vide judgment dated 05.12.2022. Hence, the petitioner has approached this Court by way of filing present petition.

4. On 24.01.2025, the following order was passed :

"The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of impugned complaint bearing CIS No. NACT/572/2013 instituted on 09.04.2015/27.04.2015 under Sections 138/142 of the Negotiable Instruments Act, 1881 titled as 'Dharminder Vs. Virender' (Annexure P-1) judgment and order of conviction dated 12.08.2016 passed by the learned Judicial Magistrate 1st Class, Karnal (Annexure P-2), judgment dated 05.12.2022 passed by the learned Additional Sessions Judge, Karnal (Annexure P-3) and the subsequent proceedings on the basis of statement of the complainant and the order dated 03.09.2024 (Annexure P-4) passed by the learned Judicial Magistrate 1st Class, Karnal.

Notice of motion.

Ms. Geeta Sharma, DAG, Haryana puts in appearance and accepts notice on behalf of respondent No.1-State.

Process qua respondent No.2 be issued for 25.03.2025."



5. Mr. Chirag Wadhwa, Advocate has put in appearance on behalf of respondent No.2 and filed his *vakalatnama* which is taken on record. Registry is directed to tag the same at the appropriate place.

6. Service is complete.

7. Learned counsel for the petitioner submits that the matter between the parties has been compromised and as per the compromise, entire amount has been paid to respondent No.2, as discernible from Annexure P-4, copy of order dated 03.09.2024 and statement of complainant.

8. Learned counsel for respondent No.2 submits that he has obtained necessary instructions from respondent No.2 that the entire amount due towards the petitioner has been paid in terms of the settlement arrived at between the parties and nothing is due towards the petitioner. Further, respondent No.2 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.

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

10. 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.



11. 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.”

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

13. Consequently, in view of the above discussion and the compromise, the present petition is allowed and consequently, the offence under Section 138 of NI Act is compounded and the judgment of conviction and order of sentence dated 12/16.08.2016 passed against the petitioner by learned Judicial Magistrate Ist Class, Karnal as well as impugned judgment dated 05.12.2022 passed by learned Additional Sessions Judge, Karnal are hereby set aside along with all subsequent proceedings arising therefrom. The petitioner is acquitted of the notice of accusation issued against him and his bail bonds and surety bonds stand discharged.

March 25, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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