



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

1) CRM-M-26678-2016
Date of decision: 14.02.2025

Jarnail SinghPetitioner
Versus

Manoj Nevatia ...Respondent

2) CRM-M-2733-2016 (O&M)

Jarnail SinghPetitioner

Versus

Manoj Nevatia ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Mona Goyal, Advocate
for the petitioner(s) in both cases.

Mr. Joban Singh, Advocate
for the respondent(s) in both cases.

HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall decide both the above mentioned petitions as they arise out of a similar factual matrix. However, for the sake of brevity, the facts are taken from CRM-M-26678-2016.

2. The present petition has been preferred under Section 482 Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of impugned judgment dated 03.06.2016 (Annexure P-10) passed by the learned Additional Sessions Judge, Bathinda, in the case stemming from complaint bearing No. COMP-A-39345/2013 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').



FACTUAL BACKGROUND

3. Succinctly, the facts of the case are that on 04.02.2013, the respondent raised a loan of Rs. 2,00,000/- at an interest of 24% per annum from the petitioner and executed a pronote (Annexure P-1) in this regard. A receipt dated 04.02.2013 (Annexure P-2) was also provided qua the pronote, in the presence of two witnesses namely Harjit Singh and Ankur Sharma. On 04.07.2013, an amount of Rs. 2,00,000/-, inclusive of interest, became recoverable from the respondent. In order to discharge his legal liability, the respondent issued a cheque bearing no. 369703 dated 04.07.2013 for Rs. 2,20,000/- (Annexure P-3) in favour of the petitioner. However, on presentation for encashment, the cheque (supra) was dishonoured vide memo dated 05.07.2013 (Annexure P-4) with the remarks- "Insufficient Funds". Thereafter, a notice dated 23.07.2013 (Annexure P-5) was served on the respondent. However, the respondent failed to clear the dues in the stipulated time causing the petitioner to file a complaint dated 16.08.2013 (Annexure P-6) under Section 138, NI Act. On 07.10.2014, the respondent made a statement (Annexure P-7) before the learned trial Court that a compromise has been effected between the parties and that he would clear the dues within three months, failing which, this statement may be considered as his confession.

4. After the lapse of three months, the respondent moved an application for contesting the complaint (Annexure P-8). After assessing all the evidence placed on record, the learned trial Court, vide judgment dated 21.01.2015 (Annexure P-9), convicted the respondent and sentenced him to rigorous imprisonment for a period of one year and fine of Rs. 10,000/-.

Aggrieved by the same, the respondent filed an appeal before the learned lower Appellate Court which was disposed of vide impugned order dated 03.06.2016



(Annexure P-10), whereby the matter was remanded back to the learned trial Court.

CONTENTIONS

5. Learned counsel for the petitioner *inter alia* contends that learned trial Court had correctly appreciated the evidence and convicted the respondent vide judgment dated 21.01.2015 (Annexure P-9). The respondent had himself made a statement before the learned trial Court that he would clear the dues within stipulated time period as per the compromise effected between the parties. In fact, he added that in case he fails to do so, this statement (Annexure P-7) be regarded as a confession. However, not only did the respondent fail to clear the dues but he also maliciously moved an application seeking permission to contest the complaint (*supra*). As such, the learned lower Appellate Court has fallen into grave error by remanding the matter back to the learned trial Court vide judgment dated 03.06.2016 (Annexure P-10).

6. *Per contra*, learned counsel for the respondent submits that a mere statement (Annexure P-7) undertaking to make the said payment does not satisfy the ingredients to constitute an offence under Section 138, NI Act. In fact, the statement (Annexure P-7) was not recorded as per the mandatory provision of Section 164 Cr.P.C., as such it cannot be treated as a confession.

OBSERVATIONS AND ANALYSIS

7. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that a compromise was effected between the parties and the respondent-accused had made a statement dated 07.10.2014 (Annexure P-7) agreeing to repay the alleged loan amount of Rs.2,20,000/-, inclusive of interest, within three months, failing which the same would be considered to be a confession. It is trite law that no



statement made by an accused can be treated as a confession unless, prior to making such statement, he is informed that it can be used against him, at any point in the trial. However, nothing on the record indicates that the learned Magistrate explained the consequences of making a confessional statement to the respondent, therefore, the learned Court below has rightly held that this statement cannot be considered to be a confession.

8. A Co-ordinate bench of the Bombay High Court in ***Gajanan Narayan Joshi vs. Haridas Bhikulal Jobanputra 2011 (1) R.C.R. (Cri.) 798***, speaking through Justice P. D. Kode, made the following observations:

*“18. Now after considering in proper perspective the matters stated in the written statement given by the petitioner and even after taking most charitable view of the same showing his admission /willingness to pay cheque amount in view of the settlement being arrived, still it is difficult to accept the submission of learned counsel of the same amounting to admission of guilt the petitioner/accused has no right to contest the said cases on merits after filing of such a written statement. **The same is obvious as construing the same as an admission of guilt, the same should have disclosed a clear cut admission of commission of offence under Section 138 of the Negotiable Instruments Act or admission of all the facts constituting commission of such offences on his part.***

*19. Now the matters stated in the said pursis being not to the effect of petitioner/accused having committed offence under section 138 of the Negotiable Instruments Act or the matters admitted by him being insufficient to satisfy all the necessary ingredients constituting commission of such offences, it is difficult to accept the justification of submission to such effect canvassed by learned advocate for respondent No. 1. At the cost of repetition **it is prompted to record that agreement to pay cheque amount would never be construed as an admission of guilt of commission of offence under Section 138 of the Negotiable Instruments Act.**”(emphasis added)*

Further still, a Co-ordinate bench of the Calcutta High Court in

Ashis Ghosh vs. Ajay Kumar Ghosh 2017(3) R.C.R.(Criminal)352, speaking

through Justice Tapash Mookherjee, held as follows:



“10. It is true that the willingness of the Petitioners to pay back the money repeatedly expressed in the Trial Court as well as, in the Appellate Court may not be termed as 'judicial confession of guilt' in strict sense of the term, but those can be definitely considered as the Petitioners' voluntary admission of the facts necessary to constitute the offence under Section 138 of the N.I. Act...”(emphasis added)

GUIDELINES

9. Before parting with this order, this Court deems it proper to address the issue of the Magistrates being flooded with litigation pertaining to Section 138 of the NI Act. Curiously, the revision petitions filed before this Court mostly refer to matters that are no longer *res integra*, causing this Court, time and again, to step into the shoes of the Magistrates. The object and purpose behind the NI Act is to ensure expeditious disposal of cases stemming from dishonour of cheques and provide a mechanism in order to compel the wrongdoer to make the requisite payment to the victim. In spite of procedure being well-settled, this Court has observed that there is a lack of coherence amongst the Magistrates in dealing with such matters. Accordingly, it would be prudent to issue the following guidelines to assist the Magistrates in just and expeditious disposal of cases pertaining to Section 138, NI Act.

A. Jurisdiction

It is immaterial as to where the disputed cheque is presented for encashment as Section 142(2) of the NI Act stipulates that it would be deemed to have been presented before the branch where the ‘holder in due course’ or the ‘payee’ maintains his account. (See: ***Bridgestone India Pvt. Ltd. vs. Inderpal Singh (2016) 1 SCC(Cri) 472***)

B. Drill of Section 202 Cr.P.C./ Section 225 BNSS

It is mandatory to conduct an inquiry under Section 202 Cr.P.C./ Section 225 BNSS upon filing of a complaint under Section 138 of the NI Act, in



order to establish territorial jurisdiction and assess the sufficiency of material available, to proceed against the accused. The abovementioned inquiry can be conducted by the Judicial Magistrate based on the documents available on the record and it shall not be mandatory to examine witnesses in this regard. However, the evidence of the witnesses for the complainant can be taken by means of an affidavit. (See: ***In re: Expeditious Trial of Cases under Section 138 NI Act 1881 in Suo Moto Writ Peition (Crl.) No.2 of 2020***)

C. Legal Notice

Serving a legal notice with respect to dishonour of the disputed cheque is a *sine qua non* for instituting a complaint under Section 138 NI Act. Such a notice must contain all necessary details pertaining to the cause of action, including but not limited to name of the accused, cheque details and amount due, in unmistakeable terms. (See: ***Suman Sethi vs. Ajay K. Churiwal (2000) 2 SCC 380***)

D. Power of Attorney

Filing of complaint petition under Section 138 of N.I Act through power of attorney is perfectly legal and competent. The power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions. specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint. The attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. (See: ***A.C. Narayanan vs. State of Maharashtra (2014) 11 SCC 790***)



E. Vicarious Liability

In order to attract vicarious liability, the offending company must be impleaded as an accused. Further, such liability would only be placed on persons who were responsible for conducting day to day business of the accused company. The Magistrate must make a *prima facie* assessment with regard to the complicity of the accused before summoning them.

(See: ***SMS Pharmaceuticals Ltd. vs. Neeta Bhalla and another (2005) 8 SCC 89***)

F. Joint Account

If the disputed cheque is issued from a joint account, the account holders cannot be prosecuted unless the cheque has been signed by each and every person holding the account. (See: ***Mrs. Aparna A. Shah vs. M/s Sheth Developers Private Limited and another (2013) 4 SCC(Cri) 241***)

G. Amendment of Complaint

Where the amendment is merely formal in nature and does not impact the heart of the case and no prejudice has been caused to the opposite party by the amendment, in such cases, easily curable legal infirmity could be cured by means of a formal application for amendment. However, amendments to pleadings cannot be allowed when they fundamentally reshape the case in a manner that alters its core foundation or prejudices the defense. Fairness and procedural propriety demand that the case of the petitioner stand or fall on its original assertions and evidence, without the benefit of retrospective tailoring. (See: ***S.R. Sukumar vs. S. Sunaad Raghuram (2015) 9 SCC 609***)



H. Nature of Trial

Normally, the offence under Section 138 of the NI Act should be tried summarily, as stipulated by Section 143 of the NI Act. However, if the Magistrate may convert the same to a summons trial if he deems it proper, by recording brief reasons for the same so as to ensure that the conversion is not mechanical. (See: ***In re: Expeditious Trial of Cases under Section 138 NI Act 1881 (supra)***)

I. Issue of Process

The *prima facie* assessment and finding with regard to the complicity of the accused must be recorded by the Magistrate before summoning him; however, detailed reasons are not expected. The summons maybe sent by post or e-mail (to be supplied by the complainant). The Court is also at liberty to take assistance of the police or nearby Court to serve the accused. If summons are received back unserved, immediate follow up action must be taken. (See: ***Sunil Bharti Mittal vs. Central Bureau of Investigation (2015) 4 SCC 609, Indian Bank Assn. vs. Union of India (2014) 5 SCC 590, U.P. Pollution Control Board vs Dr Bhupendra Kumar Modi and another (2009) 2 SCC 147***)

J. Clubbing of Trials

If multiple cheques have been issued as a part of the same transaction, the trial Court shall club the complaints pertaining to the respective dishonoured cheques and conduct a single trial. The dishonour of multiple cheques, issued as part of a single transaction, can by no means be stated as commission of multiple offences. The limitation of joinder of multiple offense as stipulated under Section 219 Cr.P.C/ Section 242 BNSS, would not be applicable in such cases. Further, the Magistrate



shall treat the service of summons in one complaint under Section 138 of the NI Act, as deemed service in all connected complaints arising from the same transaction. (See: *In re: Expeditious Trial of Cases under Section 138 NI Act 1881 (supra)* and *Charashni Kumar Talwani vs. M/s Malhotra Poultries, Naraingarh Road, Barwala 2014(1) R.C.R. (Criminal) 233*)

K. Mediation

The Magistrate must make all possible efforts to compound the offence, preferably, at an early stage. The object and purpose of Section 138 of the NI Act is to provide a compensatory mechanism for expeditious recovery of money as opposed to punishing the accused. As such, it would be desirable for the Appellate Courts to refer the matter to mediation before hearing the appeal on merits. (See: *R. Vijayan vs. Baby (2012) 1 SCC 260*)

L. Standard of Proof

The standard of proof in cases pertaining to the NI Act would be preponderance of probabilities. The accused may provide an explanation with respect to the alleged facts and need not specifically lead evidence to establish his defence. (See: *M.S. Narayana Menon alias Mani vs. State of Kerala and another 2006(6) SCC 39*)

M. Compounding

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. Consent of the complainant would be essential to avail the remedy under Section 147 NI Act and have the offence compounded.



Compounding at the initial stage should be encouraged, however, compounding at a later stage is not debarred and is subject to appropriate compensation. Also in furtherance of this aim, it is to be indicated in the summons to the accused that the offence is compoundable in nature and that if any application is made at the first hearing with the consent of the parties, court may pass appropriate orders at the earliest. (See: ***Raj Reddy Kallem vs. State of Haryana (2024) 8 SCC 588***)

N. Review

The trial Court has not power to recall the order whereby process has been issued as that would amount to a review, which is not envisaged in the Cr.P.C or BNSS. The remedy against such order lies in invoking the inherent powers of the High Court under Section 482 Cr.P.C./528 BNSS. (See: ***Adalat Prasad vs. Rooplal Jindal and others (2004) 7 SCC 338***)

O. Discharge

For the complaints being governed by the Cr.P.C., the Magistrate would have no power to discharge the accused either in summary trial nor in summons trial. However, for the case instituted post implementation of BNSS, the accused can be discharged in a summons trial. (See: ***Proviso to Section 274 BNSS***)

P. Interim Compensation

Section 143-A NI Act, as amended by the Ministry of Law and Justice, would not be applicable retrospectively i.e. interim compensation cannot be sought in complaints filed before 01.09.2018. Further, in order to invoke this provision, it would be necessary for the accused to have pleaded not guilty to the notice of accusation. (See: ***Pawan Bhasin vs.***



State of U.P. and another 2023 SCC Online SC 1314 and G.J. Raja vs. Tejraj Surana (2020) 3 SCC(Cri) 725

Q. Recalling of witnesses

Revision against an order passed under Section 311 Cr.P.C. would not be maintainable as the same is interlocutory in nature. (See: ***Sethuraman vs. Rajamanickam (2009) 5 SCC 153***)

R. Concurrent Sentence

While no straightjacket formula can be prescribed, as far as matters pertaining to Section 138 of the NI Act are concerned, if conviction arises from multiple complaints relating to a single transaction, their respective sentences may be ordered to be run concurrently. (See: ***Benson v. State of Kerala 2016(4) RCR (Criminal) 602***)

S. Payment on filing of appeal

If the accused stands convicted, the Appellate Court may order payment of a part of the cheque amount during the pendency of the appeal under Section 148 of the NI Act. However, an opportunity must be provided to the accused to present reasons for him to be exempted from the same. This provision shall also be applicable retrospectively i.e. the same can be made applicable in cases even where the complaint has been filed before 01.09.2018. (See: ***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others (2024) 1 SCC(Cri) 90*** and ***G.J. Raja vs. Tejraj Surana(supra)***)

CONCLUSION

10. As an upshot of above discussion, the present petition is dismissed as learned counsel for the petitioner has failed to point out any perversity or



illegality in findings recorded by the learned lower Appellate Court which warrants interference by this Court. Pending miscellaneous application(s), if any, shall also stand disposed of.

11. The Registry is directed to circulate a copy of these guidelines to the Director, Chandigarh Judicial Academy in order to impart necessary training to trainee Magistrates that would ensure coherence and parity in judicial decisions.

12. A photo copy of this order be placed on the file of connected case.

(HARPREET SINGH BRAR)
JUDGE

14.02.2025
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No