



**CRM-M-26106-2017 and
CRM-M-35461-2017**

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Date of decision: 16.09.2025

CRM-M-26106-2017

M/S GIAN CHAND AND ORS

...Petitioners

Versus

GOPAL KRISHAN MALHOTRA

...Respondents

CRM-M-35461-2017

M/S GIAN CHAND ANR ORS

...Petitioners

Versus

MOHINI MALHOTRA

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Navjinder Singh Sidhu, Advocate,
for the petitioners.

Mr. Namit Gautam, Advocate,
for the respondent.

AMAN CHAUDHARY, J. (ORAL)

1. This order shall dispose of above-mentioned two petitions involving identical facts, but different cheques, and thus resulting in two separate complaints under Section 138 of the Negotiable Instruments Act, 1881, (for short 'N.I. Act').

2. Challenge in the present petitions are to the orders dated 28.04.2017, Annexure P-5 in CRM-M-26106-2017 and 01.09.2017,

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Annexure P-6 in CRM-M-35461-2017, whereby applications moved by the petitioners under Section 147 of the Negotiable Instruments Act seeking compounding the offences have been dismissed.

3. Learned counsel submits that the petitioners are ready to make the payment of cheque(s) amount i.e. Rs.13,50,000/- in both cases, therefore, necessary direction be given to compound the offence.

4. Learned counsel for the respondent submits that though the petitioners had filed applications for compounding the offence before the Appellate Court/trial Court, however, even though the respondent was not agreeable for it on account of the fact that they were only paying the cheque amount and not anything over and above. As such, the respondent has a right to refuse to get the offence compounded. Further that, the matter has been referred 4 times to the Mediation Centre, still nothing was paid to them. Reference is made to the judgments in **M/s Anand Tools Ltd. And others vs. M/s Anand Tools Pvt. Ltd. Jaladhar**, 2019(1) RCR (Criminal) 137, **Priya Aditya and others vs. Sharad Goel** 2019(2) Law Herald 1687 and **JIK Industries Limited and others vs. Amarlal vs. Jumani and another** 2012(1) R.C.R. (Criminal) 822.

5. Heard and perused.

6. The Hon'ble Supreme Court in **A.S. Pharma (P) Ltd. v. Nayati Medical (P) Ltd.**, 2024 SCC OnLine SC 2539, has held that the Court could not quash the complaint under Section 138 of the NI Act in the exercise of its inherent power without the consent of the complainant

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based on the fact that the complainant has been adequately compensated.

It was observed:-

"14. As relates the requirement of 'consent' for compounding offence under Section 138, N.I. Act, by invoking the power under Section 147, N.I. Act, it is to be noted that the question is no longer res integra. This Court in the decision in JIK Industries Ltd. & Ors v. Amarlal V.Jumani & Anr. [(2012) 3 SCC 255] declined to accept the contention that in view of the non-obstante clause in Section 147, NI Act, which is a special statute, the requirement of consent of the person compounding the offence under Section 138, N.I. Act, is not required. After extracting provision under Section 147, N.I. Act, this Court in JIK Industries Ltd. case (supra) observed and held in paragraph 58 and 59 thereof thus: -

"58. Relying on the aforesaid non obstante clause in Section 147 of the NI Act, the learned counsel for the appellant argued that a three-Judge Bench decision of this Court in Damodar [(2010) 5 SCC 663], held that in view of non obstante clause in Section 147 of the NI Act, which is a special statute, the requirement of consent of the person compounding in Section 320 of the Code is not required in the case of compounding of an offence under the NI Act.

59. This Court is unable to accept the aforesaid contention for various reasons which are discussed below."

15. In the contextual situation it is relevant to refer to a recent decision of this Court in Raj Reddy Kallem v. The State of Haryana & Anr. [2024 INSC 347]. The said decision would reveal that this Court took note of earlier decisions of this Court in JIK Industries Ltd. case (supra) as also in the decision in Meters and Instruments Private Ltd. & Anr. V. Kanchan Mehta [(2018) 1 SCC 560] and in un-ambiguous terms held that for compounding the offence under Section 138, N.I. Act, 'consent' of the complainant is required. In Kanchan Mehta's case (supra) even after referring to the decision in JIK Industries ltd. case (supra) this Court held that even in the absence of 'consent' Court could close criminal proceedings against an accused in a case under Section 138, N.I. Act, if the accused had compensated the complainant. It was held therein thus:-

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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.

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16. But then, it is to be noted that later a & five-Judge Constitution Bench in *Expeditious Trial of Cases Under Section 138, N.I. Act, 1881*, In re, (2021) 16 SCC 116 held that observation in Kanchan Mehta's decision giving discretion to the trial Court "to close the proceedings and discharge the accused", by reading Section 258, Cr.P.C., which confers the power to stop proceeding in certain cases, 'not a good law'. In Raj Reddy Kallem's case (supra), after referring to the above positions this Court further observed that even in Kanchan Mehta's case (supra) nowhere it was contemplated that 'compounding' could be done without the 'consent' of the parties. It is worthwhile to note at this juncture that in Raj Reddy Kallem's case this Court drew nice distinction between 'quashing of a case' and 'compounding an offence'. To drive that point home, this Court referred to the decision in *JIK Industries Ltd. case* (supra), where this Court distinguished the quashing of a case from compounding as hereunder:-

"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."

17. It is in the aforesaid circumstances that we held that the question whether the offence under Section 138, N.I. Act could be compounded invoking the power under Section 147, N.I. Act, without consent of the complainant concerned, is no longer *res integra*. In short, the position is 'that an offence under Section 138, N.I. Act could be compounded under Section 147 thereof, only with the consent of the complainant concerned'. In that view of the matter, the impugned judgment of the High Court wherein despite the absence of the consent of the appellant-complainant compounded the offence under Section 138, N.I. Act, on the ground that the appellant was equitably compensated, could not be sustained. "

7. In the present case, the cheques were issued on 05.12.2011 for an amount of Rs.13,50,000/-, however, a period of more than 13 years has elapsed since then, but despite the reference of the matter four times for mediation, the petitioners were unable to settle the same and even after time was taken from this Court, they have not come up with any offer or showed their *bona fide*.

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8. In view of the foregoing, the orders impugned suffer from no illegality or perversity and as such, the present petitions are dismissed.
9. The amount deposited with the Registrar, in pursuance of the order dated 24.07.2017 passed in CRM-M-26106-2017, be refunded to the petitioners against proper receipt and identification.
10. Photocopy of this order be placed on the connected file(s).

16.09.2025
parveen kumar

(AMAN CHAUDHARY)
JUDGE

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