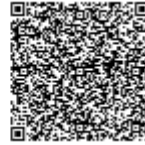


2025:PHHC:059761



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

CRM M-24252 of 2025

Date of Decision: 06.05.2025

Brijpal @ Brijpal Rathi

...Petitioner

Versus

State of Haryana and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ashish Gupta, Advocate, for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition against the impugned order dated 15.04.2025 passed by the Court of Shri Virender Malik, Additional Sessions Judge, Gurugram, whereby, the present petitioner has been ordered to deposit 10% of the composition fee in the District Legal Services Authority, Gurugram.

2. Learned counsel for the petitioner contends that the respondent No. 1 had filed a complaint against the present petitioner/accused, on account of dishonour of a cheque of Rs.35 lacs. After the conclusion of the trial, the petitioner was ordered to be convicted for the offence under Section 138 of the Negotiable

Instruments Act 1881 (hereinafter to be referred as '**the Act**') and was sentenced to undergo simple imprisonment for a period of one year and to pay a compensation to the tune of Rs.35 lacs, i.e., the cheque amount alongwith simple interest @ 9% per annum from the date of receipt of cheque, i.e., 07.06.2013 till date of payment in terms of Section 357(3) Cr.P.C. to the complainant within two months from today.

3. Thereafter, the petitioner filed an appeal, i.e., Criminal Appeal No. 614 of 2023 titled as **“Brijpal Vs. Asift Ali”**, which is pending in the Court of Additional Sessions Judge, Gurugram. Learned counsel submits that the matter has been settled between the parties for an amount of Rs.27 lacs in total and the petitioner has already transferred a sum of Rs. 2 lacs to the respondent No.1/complainant. Even, the parties have made a prayer before the appellate Court to grant them permission to compound the offences. The appellate Court allowed the parties to compound the matter, however, at the same time, the appellate Court imposed 10% of the composition fee on the petitioner. Learned counsel further submits that the petitioner is running a shop of recharge of mobile phones and is a poor person. Even, he is the sole bread winner for his family. Even, he has to make the payment of Rs.27 lacs to respondent No. 1. Consequently, the composition fee of 10% may be waived off.

4. On the other hand, learned counsel appearing on behalf of respondent No. 1 submits that he has no objection, in case, the present petition is allowed by this Court.

5. I have heard learned counsel for the parties and perused the record carefully.

6. The Hon'ble Supreme Court in the matter of ***B.V. Seshaaiah Vs. The State of Telangana and another 2023 Live Law (SC) 75*** has held as follows:-

"10. In the case of M/S Meters and Instruments Private Limited & Anr. v. Kanchan Mehta, this court held that the nature of offence under section 138 of the N.I Act is primarily related to a civil wrong and has been specifically made a compoundable offence. The relevant paragraph of the judgment has been extracted herein:

"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."

11. This is a very clear case of the parties entering into an agreement and compounding the offence to save

themselves from the process of litigation. When such a step has been taken by the parties, and the law very clearly allows them to do the same, the High Court then cannot override such compounding and impose its will."

7. Still further, while considering the issue of compounding at the appellate stage, the Hon'ble Supreme Court has held in the matter of **K.Subramanian v. R.Rajathi (2010) 15 SCC 352**, as follows:-

"6. Having regard to the salutary provisions of section 147 of Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.

7. xx xx xx

8. The CRL.M.P. No.12804 of 2009 in which the prayer is made by petitioner to permit him to produce affidavits sworn by him on December 1, 2008 as well as affidavit sworn by P. Kaliappan power of attorney holder of R. Rajathi on December 1, 2008, as additional documents is allowed. CRL. M.P. No.12803 of 2009 in which the petitioner has prayed to permit him to compound the offence and acquit him by setting aside the conviction recorded in Criminal case No. 726/2003 under section 138 of the Negotiable Instruments Act by Learned Judicial Magistrate, Karur is allowed. The petitioner is permitted to compound the offence. The Order of conviction and sentence recorded by all the Courts are

hereby set aside and petitioner is acquitted of the charge levelled against him."

8. The compounding of the offence at later stages of litigation in cases under Section 138 of the Act has also been held to be permissible by Hon'ble The Supreme Court in the case of ***K.M. Ibrahim v. K.P. Mohammed, (2010) 1 SCC 798***, wherein it was held thus:

"11. As far as the non-obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences.

12. It is true that the application under section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution."

9. Reiterating the aforesaid, Hon'ble The Supreme Court in the case of ***Damodar S.Prabhu v. Sayed Babalal H. 2010(5) SCC 663*** had held that in case of dishonour of cheque, accused convicted, there is no stage prescribed for compounding of offence under the Act and it was observed that "It is true that the application under section 147 of the Negotiable Instruments Act was made by the parties after

the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings." It was further observed 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 can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance."

10. In the present case, the present petitioner is stated to be running a shop for mobile phone recharge and is a poor person. Consequently, this Court is inclined to accept the prayer of the petitioner for waiving off the 10% of the composition fee and the impugned order passed by the Additional Sessions Judge, Gurugram is set aside to that extent only.

11. However, the petitioner is ordered to deposit an amount of Rs.10,000/- as costs with Haryana State Legal Services Authority within a period of two weeks from today.

12. The petition stands allowed in the above terms.

06.05.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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