



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

CRR-1321-2019

Date of decision: 27.02.2025

GURPREET SINGH

...PETITIONER

V/S

**PUNJAB BACKWARD CLASSES LAND DEVELOPMENT AND
FINANCE CORPORATION**

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amaninder Preet, Advocate for the petitioner.

Mr. G.C. Garg, Advocate for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition has been preferred against the judgment dated 10.05.2019 passed by learned Sessions Judge, Barnala, upholding the judgment of conviction and order of sentence dated 29.08.2018 passed by learned Judicial Magistrate Ist Class, Barnala, vide which, the petitioner was convicted and sentenced to undergo RI for 01 year with a fine of Rs.500/-, in default of payment of fine, to undergo 15 days under Section 138 of Negotiable Instruments Act, 1881.

2. Brief facts of the present case are that the petitioner availed a loan of Rs.95,000/- from the respondent to start a diary farm on 30.12.2008 and the amount of Rs.1,56,438/- was due on 30.06.2015. In discharge of the said liability, he issued a cheque bearing No.398601 dated 30.06.2015 for an amount of Rs.1,56,438/- drawn on Punjab National Bank, Branch Handiaya Bazar, Barnala, in favour of the complainant. When the said cheque was presented for encashment, the same was dishonoured vide return memo dated



25.07.2015 with remarks “Insufficient Funds”. Thereafter, the complainant issued a registered notice dated 07.08.2015 through post office, however, the accused 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 29.08.2018. Aggrieved by the same, the petitioner approached the learned lower Appellate Court, but his appeal was dismissed vide judgment dated 10.05.2019.

4. On 19.08.2021, the following order was passed :

“Learned counsel for the petitioner contends that he had initially availed a loan of Rs.95,000/- from the respondent, but since he defaulted in repayment, he was declared a defaulter and an amount of Rs.1,56,438/- was shown to be outstanding as on 30.06.2015. Although the petitioner had issued a cheque for the said amount, but the same came to be dishonoured leading to filing of a complaint by the respondent. It has been submitted that during the course of trial, the petitioner made a payment of Rs.26,000/-, but could not repay the remaining amount on account of his poor financial status, but as of now he has made the balance payment of Rs.1,30,500/- in 2019.

Since this Court finds that a substantial amount has been paid by the petitioner, Mr. G.C.Garg, Advocate, who is representing the respondent, to seek necessary instructions from the respondent for amicable settlement of the matter in view of the amount paid. It is expected that the respondent will have a considerate approach keeping in view the fact that entire world has been affected on account of pandemic and earnings stand decreased in a number of professions.

List on 16.09.2021.

Interim directions, if any, to continue.

Learned counsel for the petitioner to inform Mr. G.S.Garg, Advocate about the aforesaid order.”



5. Learned counsel for the respondent submits that he has obtained necessary instructions from the respondent that it has received the whole amount and the respondent 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.

6. I have heard learned counsel for the respondent and perused the paper-book with his able assistance.

7. 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.

8. 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..... xxxxx xxxxx xxxxx

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.”

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



10. Consequently, in view of the above discussion and the compromise, the present revision petition is allowed and the judgment of conviction and the order of sentence dated 29.08.2018 passed against the petitioner by learned Judicial Magistrate Ist Class, Barnala as well as impugned judgment dated 10.05.2019 passed by learned Sessions Judge, Barnala are hereby set aside. The petitioner is acquitted of the notice of accusation issued against him and his bail bonds and surety bonds stand discharged.

February 27, 2025
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(HARPREET SINGH BRAR)
JUDGE

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