



**115+256 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-49724-2024 in/and
CRR-1217-2024 (O & M)
Date of decision: 13.01.2025**

SUKHWINDER SINGH

...PETITIONER

V/S

**THE PRIMARY COOP. AGRI. DEVELOPMENT BANK LTD
PATIALA AND ANOTHER**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. I.S. Kooner, Advocate and
Ms. Avneet Kaur, Advocate for the petitioner.
Ms. Seema, Advocate for respondent No.1.
Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

CRM-49724-2024

Allowed as prayed for.

CRM-25556-2024

For the reasons mentioned in the application, the same is allowed.

Delay of 830 days in filing the present revision petition is hereby
condoned.

MAIN CASE

1. The instant revision petition has been preferred against the
impugned judgment of conviction and the order of sentence dated 12.12.2019
passed against the petitioner by learned Judicial Magistrate Ist Class, Patiala in
complaint case bearing CNR No.PBPT03012722-2017 dated 03.10.2017 filed
under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter
referred as NI Act) as well as the impugned judgment dated 06.12.2021 passed
by learned Additional Sessions Judge, Patiala, whereby, the appeal filed by the



petitioner against the judgment of conviction dated 12.12.2019 has been dismissed. The petitioner was sentenced as under :-

Name of the convict	Convict under Section	Sentence
Sukhwinder Singh	138 NI Act	RI for 01 year with compensation equivalent to cheque amount of Rs.2,50,000/- along with simple interest @ 9% p.a. from the date till the final realization date of issuance of cheque in default of payment to further undergo for 03 months

FACTUAL MATRIX

2. Facts, in brief, are that the present complaint has been filed by the complainant bank through its Assistant Branch Manager Sh. Jagtar Singh (at that time, who was competent to file the present complaint and to do all acts for the conduct of the legal proceedings of the complaint and was well conversant with the facts of the complaint) that the accused/petitioner approached the complainant for house repair loan facility of Rs.2,50,000/- and accused agreed to make the repayment of above-said loan amount with interest at the agreed rate and other expenses in installments, but however, the petitioner-accused failed to repay the loan amount regularly as per repayment schedule and committed default and in this way, the account of the accused/petitioner became irregular. In discharge of his lawful liability towards the complainant/respondent, the petitioner/accused issued a cheque bearing No.951067 dated 04.08.2017 for a sum of Rs.2,50,000 drawn at SBI, Patiala ADB Branch, Patiala, and assured that the said cheque will be honoured as and when the same be presented for encashment by the complainant bank. It is further averred that the above-said cheque was presented by the complainant for encashment, but the same was dishonoured and returned unpaid along with



bank memo dated 07.08.2017 with the remarks "Funds Insufficient". It is further submitted that the complainant got issued a legal notice on the petitioner/accused on 04.09.2017 through his counsel through registered post and the petitioner/accused was called upon to pay the amount of the returned cheque within 15 days from the receipt of the notice but the petitioner/accused has failed to repay the amount of loan till date. Hence the present complaint.

3. After preliminary evidence, the petitioner was summoned to face trial vide order dated 03.10.2017. After his appearance, he was served with notice of accusation under Section 138 NI Act on 12.12.2017, to which, he pleaded not guilty and claimed trial.

4. Ultimately, the learned trial Court after appreciating the complete evidence on record, convicted the petitioner on grounds that the cheque was signed and issued by him in favour of the respondent/complainant despite having knowledge that he has no sufficient funds in his account.

CONTENTIONS

5. Learned counsel for the petitioner *inter alia* contends that the petitioner had obtained a loan of Rs.2,50,000/- and mortgaged his land situated in Village Tarora Kalan. Thereafter, on failure of payment of EMIs of loan, a case under Section 138 of NI Act was filed against him and the learned trial Court convicted the petitioner and awarded him rigorous imprisonment of one year and further directed him to pay the compensation amount of Rs.2,50,000/- along with simple interest @ 9% per annum. The appeal against the impugned judgment of conviction was upheld by learned Additional Sessions Judge, Patiala on 06.12.2021.

6. Learned counsel further submits that during the pendency of the present petition, a compromise has been effected between the parties and the



petitioner has paid Rs.3,00,000/- to the complainant/respondent i.e. the entire outstanding amount on 23.11.2023, which has also been accepted by the complainant/respondent as full and final settlement. Further, learned counsel relies upon the judgment passed by the Hon'ble Supreme Court in ***Ghanshyam Gautam and another vs. Usha Rani (since deceased) through LRs, 2024(1) CriCC 564*** to contend that once the compromise has been effected and the settled amount has been received by the complainant, the offence under Section 138 of NI Act can be compounded.

7. Learned counsel for respondent No.1 affirms the factum of compromise and also the fact that the complainant-bank has received the settled amount and it has no objection, in case, the offence under Section 138 of NI Act be compounded and the petitioner be acquitted of the charges framed against him.

8. Learned state counsel submits that the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, as such, the petitioner does not deserve any leniency.

OBSERVATION & ANALYSIS

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..... 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.”

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

CONCLUSION

13. Consequently, in view of the above discussion and settlement deed dated 23.11.2023, the present revision petition is allowed and the judgment of conviction and the order of sentence dated 12.12.2019 passed against the petitioner by learned Judicial Magistrate Ist Class, Patiala as well as impugned judgment dated 06.12.2021 passed by learned Additional Sessions Judge, Patiala are hereby set aside. The petitioner is acquitted of the notice of accusation and his bail bonds and surety bonds also stand discharged. Petitioner-Sukhwinder Singh is stated to be in jail in the present case. So, he is ordered to be released immediately, if his custody is not required in connection with any other case.

14. Pending application(s), if any, stands disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

January 13, 2025
manisha

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