



CRR-3606-2018 (O & M)

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

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CRR-3606-2018 (O & M)

Date of decision: 04.09.2025

SUKHVINDER SINGH

....Petitioner

Versus

SANJAY GUPTA AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sutikshan Sharma, Advocate,
for the petitioner.

None for respondent No.1.

Mr. Parmod Kumar, AAG, Haryana.

AMAN CHAUDHARY, J. (ORAL)

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Allowed as prayed for. Annexure P-2 is taken on record.

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1. The challenge in the present criminal revision is to the order dated 17.01.2018 passed by learned Addl. Sessions Judge, Ambala, dismissing the appeal preferred against the judgment of conviction and order of sentence dated 09.02.2015 and 10.02.2015 passed by learned Judicial Magistrate Ist Class, Ambala, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for 2 years under Section 138 of the N.I. Act and to pay a cheque amount of Rs.17 lakh to complainant-respondent No.1 as compensation.

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2. The facts relevant as narrated in the complaint filed under Section 138 of the NI Act by complainant-respondent No.1 are that the accused-petitioner and one Daljeet Kaur agreed to sell the land to the complainant, vide agreement to sell dated 17.12.2011, and at that time, the latter paid an earnest money of Rs.25 lakh, but they did not comply with the terms and conditions of the same. However, they mutually agreed to return the earnest amount. For this purpose, the petitioner-accused issued a cheque No.442373 dated 30.01.2013, amounting to Rs.17 lakh to the complainant to discharge part liability. However, on presentation thereof, the same were dishonoured and returned with the remarks "Account Closed". Despite issuance of legal notice, the petitioner failed to make the payment within the stipulated period. The proceedings against him were initiated under Section 138 of the NI Act, pursuant to which, he appeared and was released on bail. On finding prima facie case under Section 138 of the NI Act, notice of accusation was served upon him, to which he pleaded not guilty and claimed trial.

3. In order to prove its case, the complainant examined himself as CW 1 and also tendered certain documents. On closure of evidence, statement of accused-petitioner under Section 313 Cr.P.C. was recorded, he denied all the allegations raised against him and pleaded innocence. In his defence, the accused examined Suresh Kumar Verma, Tax Assistant, IT Department as DW 1.

4. After scrutinizing the evidence led by the parties, the trial Court came to the conclusion that the complainant has successfully

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proved its case against the petitioner-accused, and convicted and sentenced him, as mentioned in para no.1 above. Aggrieved convict-petitioner filed appeal, which was dismissed by learned Addl. Sessions Judge, Ambala, vide impugned judgment dated 17.01.2018.

5. Hence, the present revision petition.

6. As is recorded in the order dated 31.01.2019, the parties had compromised the matter, in pursuance thereof, they were directed to appear before the trial Court/Illaq Magistrate for recording their statements with regard to the compromise.

7. Pursuant to the aforesaid order, report dated 13.02.2019 has been received from the Judicial Magistrate Ist Class, Ambala. A perusal of the same reveals that statements of the concerned persons have been recorded, who stated that the matter has been settled between them.

8. Learned counsel submits that with a view to put an end to the long standing dispute, the petitioner has with great difficulty managed to collect Rs.1, 55,000/- which has been deposited vide receipts Annexure P-2 and prays for waiving off the remaining compounding fee, in view of the fact that he is a poor person, only bread earner of the family, not having good health and suffering from various ailments like diabetes, kidney etc.

9. It is apposite to refer to the judgment of Hon'ble The Supreme Court in **B.V.Seshaiah vs. The State of Telangana and another** 2023 Live Law (SC) 75, wherein it was held thus:

“10. In the case of M/S Meters and Instruments Private Limited & Anr. Vs Kanchan Mehta, this court held

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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. Dishonor 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.”

10. Hon'ble The Supreme Court in the case of **K.Subramanian vs. R.Rajathi** (2010) 15 SCC 352, has held as under:-

“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

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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 leveled against him.”

11. The compounding of the offence at later stages of litigation in cases under Section 138 of NI Act has also been held to be permissible by Hon'ble The Supreme Court in a case of **K.M. Ibrahim vs. K.P. Mohammed & Anr.**, 2009 (14) SCALE 262, wherein it was held as under:-

"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."

12. Reiterating the aforesaid Hon'ble The Supreme Court in the case of **Damodar S.Prabhu(supra)** has held that in case of dishonour of cheque, accused convicted, there is no stage prescribed for compounding of offence under Section 147 of 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

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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.”

13. In the peculiarity of facts and circumstances of the case and in light of the judgment in **Damodar S. Prabhu vs. Sayed Babalal H.**, 2010(5) SCC 663, the petitioner is permitted to compound the offence. However, this Court is not inclined to accept the prayer for waiving off the compounding fee, but considering the mitigating circumstances of the petitioner brought out by his learned counsel, as noticed above, the same is reduced to the amount already paid, in view of the afore-referred decisions. The judgment of conviction/order of sentence recorded by the trial Court and affirmed by the appellate Court are hereby set aside and the petitioner is acquitted of the charges framed against him.

14. The revision petition stands disposed of accordingly.

15. Pending application, if any, shall disposed of.

04.09.2025

parveen kumar

(AMAN CHAUDHARY)
JUDGE

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