

CRR-2283-2024 (O&M) and one more case -1-

257+296 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

1. CRM-M-56622-2024 (O&M)
Date of Decision: 20.02.2025
RAJINDER SINGH
...Petitioner

V/S

STATE OF PUNJAB AND ANOTHER ...Respondents

2. CRR-2283-2024 (O&M)
Date of Decision: 20.02.2025
RAJINDER SINGH
...Petitioner

V/S

JAGDISH SINGH ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhmeet Singh, Advocate
for the petitioner(s).

Mr. Rishabh Singla, AAG Punjab.

Mr. Sajan, Advocate for
Ms. Sunita Devi, Advocate for respondent in CRR-2283-2024 and
for respondent No. 2 in CRM-M-56622-2024.

HARPREET SINGH BRAR J. (Oral)

CRM-45301-2024 in CRR-2283-2024

Allowed as prayed for.

Delay of 680 days in filing the revision petition No. CRR-
2283-2024 is condoned.

CRM-6013-2025 in CRR-2283-2024

This is an application under Section 359(6) of Bhartiya Nagrik
Suraksha Sanhita, 2023 read with Section 528 of BNSS for allowing the
parties to the petition to compound the offence under Section 138 of

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Negotiable Instruments Act for which the petitioner has been convicted by learned Additional Sessions Judge Faridkot, by upholding the judgment of conviction and order on quantum of sentence dated 09.03.2020 passed by learned Judicial Magistrate Ist Class, Faridkot.

Allowed as prayed for.

CRM-M-56622-2024 and CRR-2283-2024

1. This order of mine shall dispose of aforementioned two petitions as both the petitions are filed by the same petitioner.
2. Prayer in **CRR-2283-2024** is for setting aside the judgment dated 03.10.2022 passed by learned Additional Sessions Judge, Faridkot vide which the judgment of conviction and order on quantum of sentence dated 09.03.2020 passed by learned Judicial Magistrate Ist Class, Faridkot have been upheld vide which the petitioner has been convicted under Section 138 of Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for two years and imposed a fine of Rs. 5,000/- in complaint bearing NACT No.32 of 2018 dated 02.01.2018 titled as '**Jagdish Singh Vs. Rajinder Singh**'.
3. Further prayer in **CRM-M-56622-2024** is for quashing of the order dated 20.05.2023 (Annexure P-17) passed by learned Judicial Magistrate 1st Class, Faridkot, in aforesaid complaint, vide which the petitioner was declared as proclaimed person.
4. The following order was passed on 20.01.2025 in CRM-M-56622-2024:

“Present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing

of the order dated 20.05.2023 (Annexure P-17) passed by learned Judicial Magistrate 1st Class, Faridkot, in complaint bearing NACT No.32 of 2018 dated 02.01.2018 titled as 'Jagdish Singh Vs. Rajinder Singh' under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), registered at Police Station Sadar Kotkapura, District Faridkot, vide which the petitioner was declared a proclaimed person.

Notice of motion.

At this stage, on asking of the Court, Mr. Sandeep Kumar, DAG, Punjab accepts notice on behalf of respondent No.1-State and Ms. Sunita Devi, Advocate accepts notice for respondent No.2.

Adjourned to 20.02.2025.

Since the petitioner and respondent No.2 have effected a compromise and respondent No.2 has received the entire payment as per the settlement/affidavit (Annexure P-18), the parties are directed to appear before learned trial Court/Illaq Magistrate within two weeks from today or any other date convenient to learned trial Court/Illaq Magistrate, to get their statements recorded regarding compromise and after recording their statements, learned trial Court/Illaq Magistrate is directed to send report regarding the genuineness of compromise and also to intimate whether any PO proceedings are pending against any of the party on or before the date fixed.

In the meantime, operation of the impugned order dated 20.05.2023 (Annexure P-17) shall remain stayed, as the offence under Section 138 of NI Act is compoundable.

A copy of this order be sent to learned trial Court/Illaq Magistrate through fax for compliance."

5. Learned counsel for the petitioner submits that petitioner has already complied with the aforementioned order dated 20.01.2025 and further in compliance of the aforesaid order, a report has been received from the concerned jurisdictional Court and perusal of the said report reveals that the petitioner and respondent No. 2 have appeared before the jurisdictional Court and respondent No. 2 has made a statement that entire



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amount has been received by him and he has no objection if the complaint(supra) as well as the judgment of conviction and order on quantum of sentence are set aside qua the petitioner.

6. I have heard learned counsel for the petitioner and perused the record of the case with his able assistance and with the consent of parties, the matter is taken up for final disposal.

7. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 of Cr.P.C. and non- recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (Crl.) 319***, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

8. 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. 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.

9. 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.....

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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.”

10. Moreover, a two Judge Bench of the Hon'ble Supreme Court in ***JIK Industries Limited and others Vs. Amar Lal V. Jumaní and another (2012) 3 SCC 255*** has examined the issue whether for

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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.”

11. In view of the above discussion, the offence under Section 138 of the Negotiable Instruments Act, 1881 is compounded and judgment of conviction and order on quantum of sentence dated 09.03.2020 passed by learned Judicial Magistrate Ist Class, Faridkot and further the judgment dated 03.10.2022 passed by learned Additional Sessions Judge, Faridkot and the order dated 20.05.2023 (Annexure P-17) passed by learned Judicial

Magistrate 1st Class, Faridkot vide which the petitioner was declared as

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proclaimed person and all subsequent proceedings arising therefrom are quashed/set aside, qua the petitioner and the petitioner is acquitted of the notice of accusation framed against him. His bail bonds and surety bonds stand discharged. Accordingly, both these petitions are allowed.

12. Pending CRM(s), if any, are also disposed of accordingly.
13. A photocopy of this order be placed on the file of other connected case.

20.02.2025

Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*