

2025:PHHC:033228



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

CRR 2380 of 2024 (O&M)
Date of Decision: 10.03.2025

Jaswinder Singh ...Petitioner
Versus
State of Punjab and another ... Respondents

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

Present : Mr. K.B.S. Mann, Advocate
for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

Mr. Nayandeep Rana, Advocate
for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition against the impugned judgment dated 13.02.2024 passed by the Court of Additional Sessions Judge, Sri Muktsar Sahib and judgment and order dated 08.09.2016 passed by the Chief Judicial Magistrate, Sri Muktsar Sahib, whereby, the petitioner has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 10,000/-. In default of payment of fine, he would further undergo imprisonment for two months. However, no compensation has been awarded to the respondent/complainant in the present case.

2. The brief facts, as highlighted in the complaint before the trial Court were that on the application of the petitioner, a CCLF of Rs.18,00,000/- vide loan account No. 43180400004757 was advanced to the petitioner by the respondent No.2/complainant bank and the terms and conditions of the same were conveyed to the petitioner. According to account books of the respondent No.2, a sum of Rs. 21,43,752.40/- is due against the petitioner and in order to discharge his above said part liability, the petitioner had issued a cheque No. 596223 dated 31.07.2014 amounting to Rs. 18,00,000/- out of his account No. 04311690000378 drawn at HDFC Bank, KKP Road, Branch, Sri Muktsar Sahib with an assurance that the same would be encashed on presentation and petitioner signed the above said cheque in the present of respondent No. 2. It had been further stated that respondent No.2 presented the above said cheque to its clearing house for encashment of cheque amount and clearing house of HDFC bank returned the original cheque alongwith memo dated 13.08.2014 dishonouring the cheque disclosing the reason as "funds insufficient" and in this way the cheque issued by the petitioner was dishonoured. The petitioner had intentionally issued the above said cheque fully knowing the reasons that there was no balance in his account and as such, petitioner had committed an offence punishable under Section 138 of the Act. It had been further stated that the respondent No.2 had requested to petitioner so many times to pay the cheque amount and in this regard a legal notice had also been served

upon the petitioner on dated 26.08.2014, which was received by the petitioner, but he did not make the payment of the cheque amount to the respondent No.2.

3. After completion of the trial, the petitioner was held guilty for the commission of an offence punishable under Section 138 of the Act. However, while awarding the sentence, the petitioner was ordered to undergo rigorous imprisonment for a period of two years, but was directed to pay a fine of Rs.10,000/- only and in default of payment of fine, he would further undergo imprisonment for a period of two months only and no compensation was awarded to the respondent. The petitioner/accused filed an appeal before the Court of District and Sessions Judge, Sri Muktsar Sahib and the appellate Court/Court of Additional Sessions Judge, Muktsar Sahib, upheld the judgment of conviction and sentence passed by the trial Court. Challenging the impugned judgment, the petitioner/accused preferred present revision petition before this Court.

4. After the issuance of the notice, the respondent No. 2 did not appear before the Court despite service. Consequently, Mr. Nayandeep Rana, Advocate, was appointed as Amicus Curiae to assist the Court on behalf of respondent No. 2. During the course of hearing of the matter, this Court had noticed that the prosecution in the present case was launched by the respondent/complainant for the dishonour of a cheque of Rs. 18,00,000/-, which was issued by the petitioner more ten years ago on 31st July, 2014. However, while

awarding the sentence, the trial Court had directed the petitioner to pay a meager sum of Rs. 10,000/- only as fine and no amount of compensation was awarded to the respondent No.2/complainant. Since, this Court felt that the trial Court should have exercised its discretion to impose fine and to order payment of compensation to the respondent No.2/complainant, learned counsel for the parties were heard on the issue of awarding of adequate amount of compensation in view of the provisions of Section 138 read with Section 142 of the Act.

5. Having heard learned counsel for the petitioner and perused the record, the only question that begs determination in this case is what should be the approach of the trial Court while awarding punishment to an accused convicted for commission of offence under Section 138 of the Act; whether the trial Court should, with or without the punishment of imprisonment, impose fine which is sufficient enough to meet the liability of the accused towards the complainant as represented by the bounced cheque ?.

6. With a view to appreciate the issue raised by learned counsel for the petitioner, it is necessary to first set out Section 138 of the Act.

"138. Dishonour of cheque for insufficiency, etc., of funds in the account. --Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or

in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and,

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability".

7. As is apparent from a bare reading of Section 138 of the Act reproduced above, the Criminal Court after convicting the accused, is empowered to impose punishment of imprisonment for a term, which may extend to two years, or fine which may extend to twice the amount of cheque, or both. The trial Court is, thus, given the discretion to impose the sentence of imprisonment or fine or both.

8. That from a perusal of the provisions of Section 138 of the Act, it is apparent that the trial Court is empowered to award the imprisonment for a term, which may extend to two years or fine, which may extend to twice the amount of cheque or both. Thus, the trial Court was granted the discretion to impose the sentence of imprisonment or fine or both. Still further, while exercising this discretion, the trial Court must put in mind the object of the enactment, i.e., Negotiable Instruments Act, particularly the object of engrafting the provisions of Section 138 of the Act on the statute book. The prime object of enacting Chapter XVII, which was inserted in the Act by way of Act No. 66 of 1988 was to control and discourage the menace of cheque bouncing in the course of commercial transactions and to encourage the culture of use of cheques and enhancing the credibility of the instrument. The observations made by the Hon'ble Supreme Court in the matter of ***Damoder S. Prabhu vs Sayed Babalal H. (2010) 5 SCC 663*** are reproduced as under:

"3. However, there are some larger issues which can be appropriately addressed in the context of the present case. It may be recalled that Chapter XVII comprising Sections 138 to 142 was inserted into the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988). The object of bringing Section 138 into the statute was to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. It was to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers. If the cheque is dishonoured for insufficiency of funds in the drawer's account or if it exceeds the amount arranged to be paid from that account, the drawer is to be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both"

"4 It may be noted that when the offence was inserted in the statute in 1988, it carried the provision for imprisonment up to one year, which was revised to two years following the amendment to the Act in 2002. It is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a fine which may extend to twice the amount of the cheque serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be

best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions".

9. Later in paragraphs (17) and 18 of the said judgment, the Hon'ble Supreme Court, referring to recently published commentary on the topic of Section 138 of N.I. Act, made very apt observations. It was noticed by the Hon'ble Supreme that unlike other forms of crime, the punishment for commission of offence under Section 138 of the Act is not a means of seeking retribution, but is more a means to ensure payment of money and, therefore, in respect of offence of dishonor of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. For ready reference, the observations of the Hon'ble Supreme Court in paragraphs (17) and (18) are reproduced:

"17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act. Unlike that for other forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque. If we were to examine the

number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

18 It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice- delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. Furthermore, the written submissions filed on behalf of the learned Attorney General have stressed on the fact that unlike Section 320 of the CrPC, Section 147 of the Negotiable Instruments Act provides no explicit guidance as to what stage compounding can or cannot be done and whether compounding can be done at the instance of the complainant or with the leave of the court"

10. Similarly in the matter of **Somnath Sarkar vs Utpal Basu Mallick and another, (2013) 16 SCC 465**, the Hon'ble Supreme Court while considering the issue in paragraph (15) has summed up its observations in the following manner:

15..... Suffice it to say that the High Court was competent on a plain reading of Section 138 to impose a sentence of fine only upon the appellant.. Inasmuch as

the High Court did so, it committed no jurisdictional error....."

11. The Hon'ble Jammu and Kashmir High Court in the case of ***Abdul Hamid Mir Vs. Tariq Ahmad Khan (561-A Cr.P.C. No. 124/2015, decided on 20.02.2018)*** has also made the similar observations.

12. From a reading of provisions of Section 138 of the Act in the context of laudable object sought to be achieved by Chapter XVII of the Act, it is abundantly clear that the Criminal Court while convicting an accused for commission of offence under Section 138 of the Act, cannot ignore the compensatory aspect of remedy and the compensatory aspect can only be given due regard if the sentence imposed is at least commensurate to the amount of cheque, if not more, so that this fine, once imposed, can be appropriated towards payment of compensation to the complainant by having resort to Section 357 of Cr.P.C. Before I proceed, it would be appropriate to set out the provisions of Section 357 as well.

"357. Order to pay compensation-(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied:-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation

is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section".

13. Even, the Hon'ble Supreme Court of India has held in the matter of ***Suganthi Suresh Kumar Vs. Jagdeeshan 2002(2) SCC 420*** that the object of Section 138 of the Act is not only punitive, but compensatory as well. The Hon'ble Supreme Court clearly held that the compensatory aspect must receive priority over the punitive aspect of Section 138 of the Act and the held as follows:-

"The total amount covered by the cheques involved in the present two cases was Rs. 4,50,000. There is no case for the respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flee-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the look out of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like Section 138 of the Act would stand

defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case”

14. In a later case of **R. Vijayan vs Baby & Anr, (2012) 1 SCC 260**, their Lordships of Hon'ble Supreme Court culled out the following principle from the provisions of Chapter XVII of the Act which states as under:

"The provision for levy of fine which is linked to the cheque amount and may extend to twice the amount of the cheque (section 138) thereby rendering section 357(3) virtually infructuous in so far as cheque dishonour cases are concerned".

The Hon'ble Supreme Court in the later part of the said judgment while alluding to the intention of the Legislature for enacting Section 138 held thus:

"17. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under section 357(1)(b) of the Code. Though a complaint under section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount, (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual

direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under section 357 (1) (b) of the Code and the provision for compounding the offences under section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary".

"18. Having reached that stage, if some Magistrates go by the traditional view that the criminal proceedings are for imposing punishment on the accused, either imprisonment or fine or both, and there is no need to compensate the complainant, particularly if the complainant is not a 'victim' in the real sense, but is a well-to-do financier or financing institution, difficulties and complications arise. In those cases where the discretion to direct payment of compensation is not exercised, it causes considerable difficulty to the complainant, as invariably, by the time the criminal case is decided, the limitation for filing civil cases would have expired. As the provisions of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss

by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishonour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as a negotiable instrument, but also the credibility of courts of justice".

"19. We are conscious of the fact that proceedings under section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest. We are also conscious of the fact that compensation awarded under section 357(1)(b) is not intended to be an elaborate exercise taking note of interest etc. Our observations are necessitated due to the need to have uniformity and consistency in decision making. In same type of cheque dishonour cases, after convicting the accused, if some courts grant compensation and if some other courts do not grant compensation, the inconsistency, though perfectly acceptable in the eye of law, will give rise to certain amount of uncertainty in the minds of litigants about the functioning of courts. Citizens will not be able to arrange or regulate their affairs in a proper manner as they will not know whether they should simultaneously file a civil suit or not. The problem is

aggravated having regard to the fact that in spite of section 143(3) of the Act requiring the complaints in regard to cheque dishonour cases under section 138 of the Act to be concluded within six months from the date of the filing of the complaint, such cases seldom reach finality before three or four years let alone six months. These cases give rise to complications where civil suits have not been filed within three years on account of the pendency of the criminal cases. While it is not the duty of criminal courts to ensure that successful complainants get the cheque amount also, it is their duty to have uniformity and consistency, with other courts dealing with similar cases."

15. Still further, the Hon'ble Supreme Court in the matter of ***Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197*** expressed its anguish that some Magistrates went by the traditional view, that the criminal proceedings were for imposing punishment and did not exercise discretion to direct payment of compensation, causing considerable difficulty to the complainant, as invariably the limitation for filing civil cases would expire by the time, the criminal case was decided. Even, this Court has no hesitation to hold that while imposing sentence under Section 138 of the Act, the Court should exercise its discretion in imposing fine by having regard to Section 357(3) of Cr.P.C. Rather, the Criminal Court should bear in the mind the laudable object of engrafting Chapter XVII containing Section 138 to 142 of the Act and give priority to compensatory aspect of remedy.

16. Indisputably, the Legislature has given discretion to the Magistrate to impose a sentence of fine which may extend to double the amount of cheque and, therefore, the sentence of fine whenever imposed by the Criminal Court upon conviction of accused under Section 138 of the Act must be sufficient enough to adequately compensate the complainant. The amount of cheque and the date from which the amount under the cheque has become payable along with payment of reasonable interest may serve as good guide in this regard. To be consistent and uniform, it is always advisable to impose a fine equivalent to the amount of cheque plus at least 6% interest per annum from the date of cheque till the date of judgment of conviction. However, before inflicting such fine, the trial Magistrate must eschew the amount of interim compensation, if any, paid under Section 143A of the Act or such other sum which the accused might have paid during the trial or otherwise towards discharge of liability. It may or may not accompany the sentence of simple imprisonment. It is purely in the discretion of the trial Magistrate but having regard to the object of legislation, it shall be appropriate if the sentence of imprisonment imposed is kept at the minimum unless, of course, the conduct of accused demands otherwise.

17. In the present case also, it is apparent that the trial Court has miserably failed to take into account the peculiar facts of the present case and has imposed a fine of Rs.10,000/- only under Section 138 of the Act and in default of payment of fine, the

petitioner/accused had been directed to further undergo imprisonment for a period of two months and no amount of compensation was awarded. Thus, the respondent No.2, who was the complainant before the trial Court had even been deprived of an amount of Rs.18,00,000/-, which had become payable to him on 31.07.2014, i.e., more than 10 years ago.

18. Consequently, the present revision petition is allowed the impugned judgment dated 13.02.2024 passed by the appellate Court, i.e., the Court of Sh. Girish, Additional Sessions Judge, Sri Muktsar Sahib and the order on quantum of sentence dated 08.09.2016 passed by the Court of Sh. Vishesh, Chief Judicial Magistrate, Sri Muktsar Sahib, are set-aside and the matter is remanded back to the trial Court for considering the imposition of sentence on the present petitioner, *de-novo*, in the light of the legal proposition discussed and the observations made hereinabove. Needless to observe that the trial Court shall hear the parties afresh, before imposing the sentence on the petitioner.

19. Since, the petitioner is in custody, he shall be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned till the passing of order on quantum of sentence by the trial Court and, thereafter, the trial Court shall proceed in accordance with law.

20. Before parting with the judgment, this Court places on record its deep appreciation for Mr. Nayandeep Rana, learned Amicus Curiae, who had rendered able assistance to the Court.

21. All pending applications, if any, are disposed off, accordingly.

10.03.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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