



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

CRM-M No.66389 of 2025

Date of Decision: 28.11.2025

Rakesh Kumar and another

.....Petitioner

Versus

M/s Ramnik Steel Traders

....Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Siddharth Gupta, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed for quashing/setting aside the impugned order dated 14.11.2025 passed by learned Appellate Court/Ld. Session Judge, Fatehgarh Sahib, whereby application dated 11.07.2025 filed by the petitioners in criminal appeal bearing CRA No.45 of 2025, seeking permission to deposit the amount of the cheque in question with further permission to compound the offence punishable under Section 138 of the Negotiable Instruments Act, was dismissed in most illegal and unlawful manner.

2. Succinctly, the facts of the present case are that the respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act") against the petitioners. As per the allegations made, the petitioner had issued a postdated cheque bearing No.442552 dated 11.09.2017 for an amount of Rs.4 lacs drawn on Punjab National Bank in favour of the respondent-complainant for the discharge of his legally enforceable liability towards the respondent-



complainant. However, on presentation, the same was dishonored with the remarks “funds insufficient”. Though, the respondent issued legal notice to the petitioner but they failed to pay the amount and, thus, the petitioners were liable to be prosecuted. The learned trial Court, on summoning the petitioners, proceeded with the trial. On the conclusion of trial, the petitioners were convicted and sentenced under Section 138 of the Negotiable Instruments Act, to undergo rigorous imprisonment for a period of one year. Aggrieved by the conviction and sentence awarded by learned Sub Divisional, Judicial Magistrate, Amloh, the petitioner assailed the same by way of filing an appeal before the learned Appellate Court, Fatehgarh Sahib. Learned Appellate Court, finding no merit in the appeal, dismissed the same by upholding the conviction of the petitioner. During the pendency of the appeal filed by the petitioners as well as the revision/appeal filed by the respondent/complainant, petitioners moved an application dated 11.07.2025 before Ld. Sessions Court, Fatehgarh Sahib, seeking permission to compound the offence punishable under Section 138 of the Negotiable Instruments Act, and the same was also dismissed vide order dated 14.11.2025 observing that the complainant was not duly compensated. Hence, the petitioner has approached this Court by way of filing the present petition challenging the above order dated 14.11.2025.

3. Learned counsel for the petitioners has contended that the petitioners have been falsely prosecuted in the present complaint. He has submitted that the petitioners are ready to pay the cheque amount and also ready to compound the offence and for this purpose, during the



pendency of the appeal filed by the petitioners as well as revision/appeal by the respondent/complainant, petitioners moved an application seeking permission to deposit the amount of the cheque in question and further permission to compound the offence punishable under Section 138 of the NI Act. It is submitted that notice of the application was issued to the respondent/complainant, who filed the reply dated 26.09.2025, seeking dismissal of the same stating that without the consent of the complainant, no offence can be compounded. He further submits that the petitioner earlier approached this Court by way of filing of CRM-M-58439-2025 seeking issuance of necessary direction to the Ld. Appellate Court to decide the said application and the same was disposed of by this Court vide order dated 16.10.2025 with a direction to the Id. Appellate Court to decide the application for compounding the offence first before hearing or deciding the main appeal. However, the said application was dismissed by the Id. Appellate Court vide its impugned order dated 14.11.2025 in a most illegal and unlawful manner by observing that *“in the present case the accused is only ready to pay Rs.4,00,000/- to the complainant which is grossly inadequate. Therefore, this Court is of the considered opinion that the complainant is not duly compensated in the present case”*. Learned counsel submits that the petitioners are very much ready to make the adequate compensation as per the judgment passed by Hon’ble Supreme Court in case of **‘Damodar S. Prabhu Vs. Sayed Babalal H reported in 2010 AIR SCW 2929’**. He further submits that even otherwise, complaint under Section 138 of NI Act, can be compounded without the consent of the complainant and relies upon **‘Mahipal Vs.**



Amit Kumar and another reported in Law Finder Doc ID#2712395. He

has thus, submitted that the impugned order, being unsustainable in the eyes of law, deserve to be set aside.

4. After hearing learned counsel for the petitioners and perusing the record, it is deciphered that the petitioners have been prosecuted by the respondent/complainant by way of filing the complaint under Section 138 of the Act. The precise submission made by learned counsel for the petitioners is that the petitioners filed an application seeking necessary permission to compound the offence as they are ready to make the adequate compensation. However, as per the complaint, the total liability of the petitioners was Rs.10,27,661/-, but they have issued a cheque amounting to Rs.4,00,000/- only, which was also dishonoured, and thus, the complaint was filed.

5. For resolving the issue in hand, the provisions of Sections 138 and 147 of the Act are relevant, which are reproduced here as under:-

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.]

‘147. Offences to be compoundable:- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.’

6. The authorities relied upon by the counsel for the petitioner are distinguishable on the facts of the present case. The Hon’ble Supreme Court in **Damodar S. Prabhu (supra)**, laid down guidelines for imposing costs on parties who compound the offence under Section 138 of NI Act, at belated stage, so as to impose penalty for the delay caused.



As per the law settled, compounding of offence is permissible under the Negotiable Instruments Act, however, the Court cannot compel the complainant for the same.

7. The Hon'ble Supreme Court in '***JIK Industries Limited and others Vs. Amarlala V. Jamuni & Another, (2012) 3 SCC 255***', has held that for compounding offences under Section 138 of NI Act, consent of the complainant is mandatory. The relevant part of the judgment is as under:-

68. *Both these aforesaid decisions were referred to and approved in Damodar (supra). The decision in Damodar (supra) was rendered by referring to Article 142 of the Constitution insofar as guidelines were framed in relation to compounding for reducing pendency of 138 cases. In doing so the Court held that attempts should be made for compounding the offence early. Therefore, the observations made in paragraph 24 of Damodar (supra), that the scheme contemplated under Section 320 of the Code cannot be followed 'in the strict sense' does not and cannot mean that the fundamental provisions of compounding under Section 320 of the Code stand obliterated by a side wind, as it were.*

69. *It is well settled that a judgment is always an authority for what it decides. It is equally well settled that a judgment cannot be read as a statute. It has to be read in the context of the facts discussed in it. Following the aforesaid well settled principles, we hold that the basic mode and manner of effecting the compounding of an offence under Section 320 of the Code cannot be said to be not attracted in case of compounding of an offence under N.I. Act in view of Section 147 of the same.*

70. ***Compounding as codified in Section 320 of the Code has a historical background. In common law compounding was considered a misdemeanour. In Kenny's 'Outlines of Criminal***



Law' (Nineteenth Edition, 1966) the concept of compounding has been traced as follows:-

"It is a misdemeanour at common law to 'compound' a felony (and perhaps also to compound a misdemeanour); i.e. to bargain, for value, to abstain from prosecuting the offender who has committed a crime. You commit this offence if you promise a thief not to prosecute him if only he will return the goods he stole from you; but you may lawfully take them back if you make no such promise. You may show mercy, but must not sell mercy. This offence of compounding is committed by the bare act of agreement; even though the compounder afterwards breaks his agreement and prosecutes the criminal. And inasmuch as the law permits not merely the person injured by a crime, but also all other members of the community, to prosecute, it is criminal for anyone to make such a composition; even though he suffered no injury and indeed has no concern with the crime."

71. Russell on Crime (Twelfth Edition) also describes:-

"Agreements not to prosecute or to stifle a prosecution for a criminal offence are in certain cases criminal".

(Chapter 22 - Compounding Offences, page 339)

72. Later on compounding was permitted in certain categories of cases where the rights of the public in general are not affected but in all cases such compounding is permissible with the consent of the injured party.

73. In our country also when the Criminal Procedure Code, 1861 was enacted it was silent about the compounding of offence. Subsequently, when the next Code of 1872 was introduced it mentioned about compounding in Section 188 by providing the mode of compounding. However, it did not contain any provision declaring what offences were compoundable. The decision as to



what offences were compoundable was governed by reference to the exception to Section 214 of the Indian Penal Code.

8. The Hon'ble the Supreme Court in a recent judgment of '**A.S. Pharma Pvt. Ltd. Vs. Nayati Medical Pvt. Ltd. (SC), 2025 (1) RCR(Criminal) 714**' has observed as under:-

14. As relates the requirement of 'consent' for compounding offence under Section 138, N.I. Act, by invoking the power under Section 147, N.I. Act, it is to be noted that the question is no longer res integra. This Court in the decision in JIK Industries Ltd. & Ors v. Amarlal V.Jumani & Anr. [(2012) 3 SCC 255] declined to accept the contention that in view of the non-obstante clause in Section 147, NI Act, which is a special statute, the requirement of consent of the person compounding the offence under Section 138, N.I. Act, is not required. After extracting provision under Section 147, N.I. Act, this Court in JIK Industries Ltd. case (supra) observed and held in paragraph 58 and 59 thereof thus: -

"58. Relying on the aforesaid non obstante clause in Section 147 of the NI Act, the learned counsel for the appellant argued that a three-Judge Bench decision of this Court in Damodar [(2010) 5 SCC 663], held that in view of non obstante clause in Section 147 of the NI Act, which is a special statute, the requirement of consent of the person compounding in Section 320 of the Code is not required in the case of compounding of an offence under the NI Act.

59. This Court is unable to accept the aforesaid contention for various reasons which are discussed below."

15. In the contextual situation it is relevant to refer to a recent decision of this Court in Raj Reddy Kallem v. The State of Haryana & Anr. [2024 INSC 347]. The said decision would reveal that this Court took note of earlier decisions of this Court in JIK Industries Ltd. case (supra) as also in the decision



in Meters and Instruments Private Ltd. & Anr. v. Kanchan Mehta [(2018) 1 SCC 560] and in un-ambiguous terms held that for compounding the offence under Section 138, N.I. Act, 'consent' of the complainant is required. In Kanchan Mehta's case (supra) even after referring to the decision in JIK Industries Ltd. case (supra) this Court held that even in the absence of 'consent' Court could close criminal proceedings against an accused in a case under Section 138, N.I. Act, if the accused had compensated the complainant. It was held therein thus: -

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.

16. But then, it is to be noted that later a five-Judge Constitution Bench in Expeditious Trial of Cases Under Section 138, N.I. Act, 1881, In re, (2021) 16 SCC 116 held that observation in Kanchan Mehta's decision giving discretion to the trial Court "to close the proceedings and discharge the accused", by reading Section 258, Cr.P.C., 1973 which confers the power to stop proceeding in certain cases, 'not a good law'. In Raj Reddy Kallem's case (supra), after referring to the above positions this Court further observed that even in Kanchan Mehta's case (supra) nowhere it was contemplated that 'compounding' could be done without the 'consent' of the parties. It is worthwhile to note at this juncture that in Raj Reddy Kallem's case this Court drew nice distinction between 'quashing of a case' and 'compounding an offence'. To drive that point home, this Court referred to the decision in JIK Industries Ltd. case (supra), where this Court distinguished the quashing of a case from compounding as hereunder: -

"Quashing of a case is different from compounding. In quashing, the Court applies it but in compounding it is



*primarily based on consent of the injured party.
Therefore, the two cannot be equated."*

17. It is in the aforesaid circumstances that we held that the question whether the offence under Section 138, N.I. Act could be compounded invoking the power under Section 147, N.I. Act, without consent of the complainant concerned, is no longer res integra. In short, the position is 'that an offence under Section 138, N.I. Act could be compounded under Section 147 thereof, only with the consent of the complainant concerned'. In that view of the matter, the impugned judgment of the High Court wherein despite the absence of the consent of the appellant-complainant compounded the offence under Section 138, N.I. Act, on the ground that the appellant was equitably compensated, could not be sustained.

9. In view of the law laid down in the judgments passed by the Hon'ble Supreme Court, it is a settled position of law that compounding of a case is entirely different from quashing and compounding of a case cannot be done without the consent of the injured/aggrieved/complainant party and Court cannot compel that the injured/aggrieved/complainant to compound the case. Consent of the complainant is *sine qua non* for compounding the case. The Hon'ble Supreme Court in **A.S. Pharma Pvt. Ltd.'s** case (supra) has held that even if the complainant has been duly compensated, the case under Section 138 of the Act, cannot be compounded without the consent of the complainant. Learned Appellate Court has duly appreciated the law relied upon and submissions made by learned counsel for the petitioners and finding no merit, dismissed the same vide order dated 14.11.2025.



10. Weighing the facts and circumstances of the case and the law settled, this Court finds no infirmity in the impugned order dated 14.11.2025 passed by learned Appellate Court and thus, the present petition being devoid of any merit is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

28.11.2025
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(RAJESH BHARDWAJ)
JUDGE

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