

CRR-1246-2026

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Aash Mohammed ... Petitioner

Versus

Vinod Kumar and Another ... Respondents

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
18.05.2026	29.05.2026	FULL PRONOUNCED	29.05.2026

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rahul Makkar, Advocate
for the convict/petitioner.

Mr. Shiva Khurmi, DAG, Haryana

ANOOP CHITKARA, J.

TRIAL COURT	
Name of the Complainant	Vinod Kumar
Name of the accused/ convict	Aash Mohammed
Cheque Amount	Rs. 1,77,850/-
Complaint Case No.	COMA-515-2017 HRSO030031242017 Decided on: 13.05.2022
Conviction under sections	138 of Negotiable Instruments Act
Sentence imposed	Simple Imprisonment for 04 months along with a compensation amount of Rs. 1,77,850/-

SESSIONS COURT	
Names of convict	Aash Mohammed
Criminal Appeal No.	CRA-101 of 09.06.2022
CNR No.	HRSO01008243-2022
Date of decision	27.04.2026

1. Challenging the above-mentioned judgment passed by the trial Court, whereby the petitioner was convicted and sentenced under §138 of the Negotiable Instruments Act, 1881, which was affirmed by the Sessions Court, the convict has approached this Court by

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filing the present criminal revision petition.

2. Ld. Counsel for the petitioner had submitted that petitioner has deposited the entire compensation amount in compliance with the order dated May 13, 2022, passed by the Court of Judicial Magistrate, Ist Class, Sonipat, pursuant to which his sentence was suspended by this Court vide order dated May 18, 2026 passed in CRM-20499-2026, and that he would confine his submissions for the reduction of sentence to that which the convict has already undergone.

3. However, Ld. Counsel for the petitioner further submits that the complainant has passed away, and the convict/petitioner has no knowledge about the whereabouts of the legal representatives of the complainant.

4. Since the Ld. Counsel for the petitioner has confined his prayer to seeking a reduction of the sentence to the period already undergone; therefore, in the light of the compensation amount being deposited in full by him, this Court is not called upon to examine the correctness or otherwise of the conviction. Accordingly, the scope of the present petition before this Court is limited to the reduction of the sentence.

5. In *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay* [1958] 1 SCR 1010; 1957-INSC-108, Nov 27, 1957, a five-judge Bench of the Hon'ble Supreme Court holds,

Pending the appeal, the plaintiff died on March 11, 1953, and his daughter applied on May 22, 1953, to be substituted in his place. But eventually she did not press the application, and that was dismissed on October 5, 1953. In this Court by an order dated November 21, 1955, the cause title was amended by deleting the name of the plaintiff. Thus, the only parties who are now before the Court are the defendant and the State of Bombay.

The question is whether in the events which have happened, the appeal can proceed. We are of opinion that it cannot. It should be remembered in this connection that no decree had been passed in the suit. Only a finding has been given on a preliminary point, and it is that finding that has been the subject of appeal to the High Court of Bombay and thereafter to this Court. There are other issues still to be tried, and the action is thus undertermined. Now, the claim with which the plaintiff came to Court was that he was wrongly excommunicated, and that was an action personal to him. On the principle, *actio personalis moritur cum persona* when he died the suit should abate. As a matter of fact, his legal representative applied to be brought on record, but the application was not pressed. The result is that the suit has abated. This would ordinarily entail the dismissal of this appeal.

Mr. N. C. Chatterjee for the appellant argues that as the State of Bombay had been impleaded as a party, and that as the decision on the question of the vires of the Act had been given in its presence, the appellant is entitled to continue the appeal against the State without reference to the plaintiff.....Here, the action itself has abated, and there can be no question of an appeal in relation thereto, as an appeal is only a continuation of the



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suit, and there can be no question of continuing what does not exist.

6. In Amarjit Singh Kalra (Dead) By LRs v. Pramod Gupta (Dead) By LRs [2002] SUPP 5 SCR 350; 2002-INSC-541, Dec 12, 2002, a Constitutional Bench of five Judges of the Hon’ble Supreme Court observes,

[pg376][F-G] Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.

7. In Kaushalya Devi Massand v. Roopkishore Khore [2011] 3 SCR 879; 2011-INSC-207, Mar 15, 2011, the Hon’ble Supreme Court observes,

[9]. Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the Negotiable Instruments Act cannot be equated with an offence under the provisions of the Indian Penal Code or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones.

8. Under Chapter XXI of BNSS, 2023 “TRIAL OF SUMMONS-CASES BY MAGISTRATES”, Section 279 states that the accused can be acquitted in case of non-appearance or death of the complainant, essentially for the reason that an accusation needs a ground to stand and trial cannot take place in a vacuum. However, this provision does not extend to the revision stage when the accused has been convicted by the trial Court, and the conviction is upheld by the Sessions Court.

9. So, what happens when a complainant-respondent dies during the appellate or revision stage, and their legal representatives cannot be traced? Does the adversarial system get defeated for want of an adversary? The answer is No. The adversarial model reflects the procedural nature of the legal system and is not in itself a constitutional mandate. What the Constitution embodies is not a method of adjudication, but a standard of adjudication- a fair procedure, a fair hearing, an impartial and independent adjudicator, and a reasoned decision. What would be the justification of prolonged criminal proceedings against the petitioner when the entire compensation amount stands deposited before the Court of Ilqa Magistrate/CJM? The Courts cannot remain passive arbiters.

10. As per the judgment passed by the trial Court, the cheque amount, sentence, fine, and compensation amount awarded in favor of the complainant and against the accused petitioner being Rs. 1,77,850/-, which stands deposited, it is analyzed with the doctrine of proportionality, as follows:

SENTENCE AWARDED BY THE TRIAL COURT

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Sentence of Imprisonment	Compensation Amount/ Fine Amount	Default imprisonment in case of non-payment of compensation/fine
SI for 04 months	Rs. 1,77,850/-	NIL

11. In the appeal filed by the accused/convict, the conviction, sentence, and compensation were upheld.

12. The per-day imprisonment for the fine/compensation amount comes to:

PER-DAY IMPRISONMENT FOR FINE/COMPENSATION AMOUNT				
A	B	C	D	E
FINE + COMPENSATION AMOUNT IMPOSED	AMOUNT DEPOSITED	AMOUNT OUTSTANDING	CUSTODY AS OF DATE	FINE + COMPENSATION AMOUNT PROPORTIONATE TO PER DAY CUSTODY
		[A-B=C]		[C÷D=E]
Rs. 1,77,850/-	Rs. 1,77,850/-	NIL	20 days	0

13. Once the person has paid the compensation in full, that does not warrant keeping the person in the clutches of the criminal system, when, in fact, the dispute is of a private nature.

14. The fundamental principle that has emerged as a core doctrinal concern in criminal jurisprudence is the price a convict pays for the curtailment of their freedom due to incarceration for non-payment of fine/compensation. How many ounces of flesh does a convict have to pay every day for the inability to pay the money? It was for the Executive to have tabled legislation for the proportionate sentencing, and in its absence, the High Court, which is a primary guardian of an individual’s fundamental rights, cannot remain in the cocoon of a deep slumber. The seeds of proportionate sentencing have now sprouted, and the green shoots are visible across jurisdictions. To give meaning to the concept of equality and the principle of parity as envisaged under Article 14 of the Constitution of India, the period of imprisonment a convict has to undergo for non-payment of fine and compensation must be equivalent to the money unpaid and consistent with that imposed on similarly placed convicts. Cost of liberty must be proportionate.

15. Given the cheque amount, compensation awarded and paid in full, and the sentence already undergone, the ends of justice would be adequately met if the sentence is reduced to that already undergone by the convict.

16. The petition is partly allowed to the extent that although the conviction is maintained and upheld, the sentence of substantive imprisonment is reduced to what the petitioner has

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already undergone; and in view of the same, it is held that no further enhancement of compensation is justified or warranted.

17. The trial Court/CJM concerned is requested to make a Fixed Deposit (FD) of the entire deposited amount as mentioned above with the clause of automatic renewal and accrual of the periodic interest in the principal amount for the maximum/longest term, in a State-owned bank or any bank listed on the National Stock Exchange and/or Bombay Stock Exchange, in favor of the “Chief Judicial Magistrate” of the concerned Sessions Division.

18. Since the complainant has expired and there is no information about the complainant's legal representatives, it shall be appropriate that the trial Court sends, by any means, including by post, a printout of the downloaded copy of this order to the complainant’s last known address. The trial Court/CJM concerned can also call for the complainant’s nominee details from the bank where the cheque was presented and send communication to them through the bank and/or on their own. If any legal representative(s) becomes aware of their entitlement to the claim, they may approach the trial Court for the release of the entire compensation, along with accrued interest, less taxes, if any, as per law.

19. However, if within a reasonable period, which shall not be less than three years [Art 137 of Indian Limitation Act, 1963], if none claims, then it shall be open for the concerned trial Court/CJM to take a reasoned decision and after that forfeit the entire amount as mentioned above, along with the interest and transfer the same to Local/ District Legal Aid Services Authority.

20. Petition is partly allowed to the extent mentioned above. Pending applications, if any, stand disposed of.¹

(ANOOP CHITKARA)
JUDGE

29.05.2026
Anju Rani

Whether speaking/reasoned	YES
Whether reportable	YES

¹ I place on record the valuable assistance of Ms. Somya Sharma [Law Researcher] and Ms. Shivani Pant [Intern-NALSAR].