

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

2026:PHHC:068915



CRM-M-53977-2022 (O&M)

Sanjeev Kumar @ Sanju

...Petitioner

Versus

Parmod Kumar @ Toni

...Respondent

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	29.04.2026
2	The date when the judgment is pronounced	06.05.2026
3	The date when the judgment is uploaded on the website	06.05.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kulwinder Bhargav, Advocate
for the petitioner.

Mr. Ankur Jain, Advocate for
Ms. Rajni Gupta, Advocate
for the respondent.

MANISHA BATRA, J.

1. Prayer in this petition, filed under Section 482 of the Code of Criminal Procedure (*for short ‘the Code’*), which is *pari materia* with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, is for quashing of order dated 10.11.2022 (Annexure P-4), whereby an application filed by the petitioner for compounding the offence and setting aside the judgement of conviction and order on quantum of sentence dated 12.10.2021, passed by the

learned trial Court in Criminal complaint No. 92 of 2018, titled as ***Parmod Kumar @ Toni v. Sanjeev Kumar @ Sanju***, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), thereby holding him guilty for commission of aforementioned offence and sentencing him to undergo rigorous imprisonment for a period of two years and to pay compensation to the complainant to the tune of double amount of dispute cheque i.e. Rs.4,00,000/-, had been dismissed.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned complaint had been filed by the respondent/complainant on the allegations that the petitioner and himself were having friendly relations and were well known to each other. On 26.10.2016, the petitioner borrowed an amount of Rs.2,00,000/- from the complainant at the interest of 1% per month. In order to discharge his liability, the petitioner issued a cheque bearing No. 005395 dated 10.05.2017, drawn by Axis Bank Limited, Budhlada branch in favour of the complainant. When the complainant presented the said cheque before his banker, the said cheque was dishonoured due to insufficiency of funds on 10.05.2018. Despite issuance of a registered legal notice dated 11.05.2018, the petitioner did not make payment of the cheque amount, thereby compelling the complainant to file the aforesaid complaint.

3. On the basis of the preliminary evidence produced on record before the learned trial Court, process under Section 138 of the N. I. Act was issued against the petitioner. He appeared before the learned trial Court and was served with notice of accusation. The complainant-Bank examined some witness, besides placing reliance on some documentary evidence and thereafter its evidence was closed.

4. The statement of the petitioner/accused under Section 313 of Cr.P.C. was recorded, wherein he abjured his guilt and claimed to be innocent. The defence as set up by the accused was that he had not issued any cheque in favour of the complainant to discharge any liability. No defence evidence had been adduced by the petitioner.

5. After giving due deliberations to the contention as raised by both the sides and on appraising the entire evidence produced on record, the learned trial Court held the accused guilty under Section 138 of the N. I. Act and sentenced him in the manner as mentioned above. The petitioner filed an appeal before the Court of learned Sessions Judge, Mansa against the judgment of conviction and order on quantum of sentence passed by the learned trial Court.

6. As revealed from the record, during the pendency of the aforesaid appeal, the petitioner filed an application before the learned appellate Court seeking compounding of the offence on the ground that he was ready to pay the amount of money to the complainant as per the guidelines given by Hon'ble Supreme Court in ***Damodar S. Prabhu v. Sayed Babalal H., (2010) 2 SCC (Cri.) 1328*** but his request was not entertained by the Court concerned. Consequently, the petitioner filed a petition, bearing number ***CRM-M-41354-2022***, before this Court, which was disposed of on 13.09.2022 by issuing direction to the learned appellate Court to entertain the aforesaid application, filed by the petitioner, seeking compounding of the offence and to adjudicate the same in accordance with law, especially in the light of law laid down by the Hon'ble Supreme Court in ***Damodar S. Prabhu's*** case (supra). In compliance thereof, the learned appellate Court heard arguments and dismissed the aforesaid application, vide order dated 10.11.2022. The operative part of

the order dated 10.11.2022 reads as under:

“9. The Crux of the decision of Hon'ble High Court was that where there is no consent for compounding on the part of the complainant, it was impermissible for the trial court/appellate court to permit compounding merely on unilateral application moved by the appellant-convict. Hon'ble High Court further held that the contention of the petitioner accused that judgment in ***Damodar S. Prabhu***'s case (supra) was also to the effect that compromise could be effected with the consent of the parties and that Section 320 of Cr.P.C. had no application, was fallacious. It was clearly held that the judgment in Damodar S Prabhu's case primary proceeds on the assumption that there was consent between the parties. Consent of both the parties to compound was elementary. That compounding requires consent of both the parties. The accused cannot as a matter of right claim that a settlement should be effected because he is unilaterally willing to make good the payment. Because quashing does not require consent, therefore the court, while dealing with quashing petition, may in its discretion quash such proceedings.

10. As a result of the afore said discussion, this Court is of the confirmed and considered view that because in this case the complainant is no ready to compound the matter on the terms as laid out by the appellant-convict, the complainant cannot be compelled to enter into compounding of the offence with the appellant-convict on his terms. Therefore, this matter cannot be decided according to the spirit of Hon'ble Supreme Court in the case of ***Damodar S. Prabhu*** (supra).

11. The application moved by the appellant-convict to this effect on 28.09.2022 is accordingly dismissed.”

7. Feeling aggrieved from the aforementioned order, the petitioner/accused has filed the present petition. While issuing notice of motion

on 22.11.2022, the proceedings before the learned appellate Court were stayed by this Court. Vide order dated 07.05.2024, the petitioner had taken a stand that he was ready to pay an amount of Rs.2,30,000/-, i.e. Rs.2,00,000/- as the cheque amount and Rs.30,000/- over and above the same. It was also brought to the notice of this Court that the petitioner had already deposited an amount of Rs.80,000/- i.e. 20% of the compensation amount. However, the respondent/complainant was not ready to accept the said offer.

8. It is argued by learned counsel for the petitioner that the order passed by the learned appellate Court rejecting his application for compounding the offence is not sustainable in the eyes of law. The petitioner is ready and willing to deposit the entire cheque amount along with 15% interest in terms of the law laid down in ***Damodar S. Prabhu***'s case (supra) and, therefore, he deserves the benefit of compounding. It is further contended that the petitioner has been falsely implicated and that the allegations levelled against him are unsubstantiated and unsupported by any credible evidence, being based merely on interested oral assertions. It is further argued that the conviction dated 12.10.2021 is already under challenge in appeal before the learned appellate Court and despite the petitioner's *bona fide* readiness to pay and compound the matter, the appellate Court failed to entertain his request. It is pointed out that earlier proceedings before this Hon'ble Court culminated in a direction to the learned appellate Court to consider the application for compounding in light of the judgment in ***Damodar S. Prabhu***'s case (supra), however, the same has not been adhered to by the learned appellate Court in its true spirit. The application for compounding has been dismissed in a mechanical manner without proper appreciation of binding precedents, rendering the impugned order arbitrary and contrary to settled law. The

reliance placed by the appellate Court on the judgments requiring consent of parties is misplaced and incorrectly applied to the facts of the present case, inasmuch as the petitioner's *bona fide* willingness to pay ought to have been given due consideration. With these broad submissions, it is urged that the petition deserves to be allowed, the offence deserves to be compounded and the impugned order is liable to be quashed.

9. On the other hand, learned counsel for the respondent/complainant has argued that there is no illegality or infirmity in the impugned order passed by the learned appellate Court as the same is well-reasoned and backed by settled law. It is further argued that compounding of an offence under Section 138 of the N.I. Act necessarily requires the consent of both parties and cannot be permitted on a unilateral application moved by the petitioner/accused. In the present case, the complainant has categorically refused to compound the matter on the terms offered by the petitioner and, therefore, the petitioner cannot claim compounding as a matter of right. It is further contended that the reliance placed by the petitioner on the judgment in *Damodar S. Prabhu's* case (supra) is misconceived, as the said judgment also proceeds on the premise of mutual consent between the parties. The petitioner has already been held guilty after due appreciation of evidence and the conviction is under challenge in appeal, which is the appropriate remedy. The present petition is an attempt to circumvent the due process of law and to compel the complainant into a settlement, which is impermissible. Hence, it is urged that the present petition is liable to be dismissed.

10. This Court has heard the rival submissions.

11. The principal issue which arises for determination before this Court is whether the offence under Section 138 of the N. I. Act can be

permitted to be compounded at the instance of the accused in the absence of consent of the complainant or not? The said issue stands conclusively settled by the Hon'ble Supreme Court in ***A.S. Pharma Pvt. Ltd. v. Nayati Medical Pvt. Ltd. and others, 2024 SCC Online SC 2539***, wherein it has been held that compounding of an offence under Section 138 of the N.I. Act, though permissible at any stage in view of Section 147 of the N. I. Act, however, the same cannot be permitted to be done without the consent of the complainant, even if he has been duly compensated. It was held that the consent of the complainant is a *sine qua non* for such compounding and the attempt made by the accused to seek compounding on the basis of his unilateral willingness to pay the cheque amount, even with additional compensation, cannot be countenanced in law. The Hon'ble Supreme Court, while considering similar contentions, has categorically held that equitable compensation or readiness to pay does not dispense with the requirement of consent of the complainant. Reliance can also be placed upon the judgments in ***JK Industries Ltd. v. Amarlal V. Jumani, (2012) 3 SCC 255*** and ***K.M. Ibrahim v. K.P. Mohammed, (2010) 1 SCC 798***, wherein it has been consistently held by the Hon'ble Supreme Court that compounding is fundamentally premised on mutual agreement between the parties and cannot be imposed by the Court. Similar view has been taken by this Court in ***M/s Nidhi Knitwears (P) Ltd. and another v. Honey Hosiery Mills, 2022(3) RCR (Criminal) 304*** and ***Surinder Kumar Bindal and another v. Satinder Nath Radhey Shyam and sons, CRM-M-22823-2024, decided on 18.05.2024***.

12. It is also significant to note that the scope of inherent powers under Section 482 Cr.P.C. (now Section 528 of BNSS) cannot be expanded to override an express statutory requirement. The Hon'ble Supreme Court in

State of Haryana v. Bhajan Lal, AIR 1992 SC 604 has held that inherent powers are to be exercised sparingly and only to prevent abuse of process or to secure ends of justice and not in contravention of specific statutory provisions. In the present case, permitting compounding in the absence of consent would amount to doing precisely what is impermissible, i.e., bypassing the statutory mandate embedded in Section 147 of the N.I. Act. This Court further finds that the distinction between “quashing” and “compounding” has been clearly delineated by the Hon’ble Supreme Court in *JIK Industries*’s case (supra), wherein it has been held that quashing of a case is different from compounding as 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.

13. In the present case, it is an admitted position that the respondent/complainant has not consented to the compounding of the offence despite the offer made by the petitioner. In such circumstances, the learned appellate Court has rightly declined the application for compounding the offence and no fault can be found with the impugned order. The contention of the petitioner that his readiness to pay ought to have been considered sufficient, is clearly misconceived and contrary to the settled legal position. Accordingly, in view of the authoritative pronouncements of the Hon’ble Supreme Court and the settled principles governing the field, this Court finds no merit in the present petition. The same is, therefore, liable to be dismissed and it is ordered accordingly.

06.05.2026

Waseem R. Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No