

HIGH COURT PUNJAB AND HARYANA**Before : Harpreet Singh Brar, J.****Decided on : 07-12-2023**

CRM-M No. 21640, 21641, 21639, 21643, 21647, 21638, 21648, 21649, 21668, 21680, 21685, 21644, 21667, 21705 and 21713 of 2023(O&M)

MANOHAR INFRASTRUCTURE & CONSTRUCTION PVT. LTD. AND OTHERS — Appellant**Vs.****MONIKA SODHI AND OTHERS — Respondent****Legislation:**

Section 138/142 of the Negotiable Instruments Act, 1881 (NI Act)

Section 482 of the Criminal Procedure Code (Cr.P.C.)

Subject: Quashing of the order passed by the Sessions Judge in a case involving dishonour of cheque under Section 138 of the NI Act, focusing on the issue of compounding of offences and adequate compensation.

Headnotes:

Quashing of Order and Remand by Sessions Judge - Challenged the order of the Judicial Magistrate allowing the petitioners to pay the cheque amount with additional costs - Sessions Judge set aside the order and remanded the matter for a fresh decision - Petitioners approached High Court under Section 482 Cr.P.C. [Paras 2-3]

Petitioners' Argument - Trial Court rightly allowed deposit of cheque amount by demand draft and rejection of the complaint - Imposed costs accepted by respondent, who later filed a revision petition seeking higher interest - Challenged the revisional order as contrary to Supreme Court precedents. [Para 4]

Respondent's Argument - Emphasized on proceeding with the trial due to the absence of voluntary and unconditional consent for compounding the offence. [Para 6]

Principles Regarding Offence Under Section 138 NI Act - Discussed by the Supreme Court in various cases, highlighting the quasi-criminal nature of proceedings and the primary focus on compensation rather than punishment. [Paras 9-11]

Acceptance of Cheque Amount and Subsequent Revision Petition - Complainant initially accepted the cheque amount with costs but later contested the order - High Court observed that once the cheque amount is recovered, continuing the trial is unjustified. [Paras 13-14]

Interest Payment as Adequate Compensation - Directed the petitioners to pay 5% per annum interest on the cheque amount from the date of issuance till realization, considering it adequate compensation. [Paras 15-16]

Conclusion - Orders passed by the Revisional Court set aside - Directed dropping of proceedings against the petitioners upon payment of calculated interest, treating the matter as compounded. [Paras 17-18]

Referred Cases:

- Meters and Instruments Private Limited and another Vs. Kanchan Mehta (2018) 1 SCC 560
- Damodar S. Prabhu Vs. Sayed Babalal (2010) 5 SCC 663
- R. Vijayan Vs. Baby (2012) 1 SCC 260
- P. Mohanraj and others Vs. Shah Brothers Ispat Private Limited (2021) 6 SCC 258
- JIK Industries Limited and others Vs. Amar Lal Vs. Jumani and another (2012) 3 SCC 255

JUDGMENT

Harpreet Singh Brar, J. - By this common order, 15 petitions, details of which are given in the head note, are being disposed of, as the controversy involved in all the petitions is similar. However, for the sake of brevity, facts are being culled out from CRM-M No.21644 of 2023.

2. The petitioners in CRM-M No.21644 of 2023 have approached this Court under Section 482 Cr.P.C. for quashing of the order dated 13.01.2023 (Annexure P-6) passed by the learned Sessions Judge, Karnal in Criminal Revision No.97 of 2022 whereby the order dated 01.02.2022 passed by the learned Judicial Magistrate 1st Class, Karnal in complaint case No.3443 of 2020 under Section 138/142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) allowing the petitioners to pay Rs.5000/- as interest and costs along with the cheque amount to the respondent-complainant has been set aside and the matter has been remanded back to the trial Court to pass a fresh order.

3. Succinctly, the facts are that a complaint under Section 138 of the NI Act was filed by the respondent-complainant against the petitioners in which they were summoned. Immediately on appearance before the trial Court, petitioners moved an application to allow them to deposit the cheque amount by way of demand draft and for rejection of the complaint. The learned trial Court, while allowing the said application, vide order dated 01.02.2022, directed the petitioners to pay the cheque amount along with Rs.5000/- as interest and costs. However, the said order has been set aside by the learned

Sessions Judge vide impugned order dated 13.01.2023 passed in the revision petition preferred at the instance of the respondent-complainant. Aggrieved by the said order, petitioners have approached this Court by way of instant petition.

4. Learned senior counsel for the petitioners inter alia contended that the trial Court has rightly allowed the application filed by the petitioners to deposit the cheque amount by way of demand draft and for rejection of the complaint. The trial Court has also imposed Rs.5000/- as interest and costs while ordering deposit of the cheque amount. After acceptance of the cheque amount along with Rs.5000/- as interest and costs, the respondent-complainant made a complete U-turn and filed the revision petition before the learned Sessions Judge, Karnal seeking interest @7% per annum. The learned Revisional Court has allowed the revision petition filed by the respondent-complainant without taking into consideration the facts and circumstances of the case and the settled law. It is further contended that after accepting the cheque amount along with costs and interest of Rs.5000/-, the respondent-complainant cannot agitate the matter before the Revisional Court on the ground that he has not given consent for compounding the offence or that his consent was only conditional. Therefore, the impugned order dated 13.01.2023 passed by the learned Revisional Court is contrary to the ratio of law laid down by the Hon'ble Supreme Court in **M/s Meters and Instruments Private Limited and another Vs. Kanchan Mehta (2018) 1 SCC 560** and **Damodar S. Prabhu Vs. Sayed Babalal (2010) 5 SCC 663**.

5. The learned Senior Counsel further submitted that the petitioners shall abide by the undertaking given by them before this Court on 03.05.2023 vide which they agreed to pay interest @5% per annum on the cheque amount from the date of its issuance till the date of realization.

6. Per contra, learned counsel appearing for the respondent contended that once the offence under Section 138 of the NI Act is found to have been committed, the trial Court must proceed with the trial in view of the presumptions provided under Sections 118 and 139 of the NI Act. In the absence of voluntary and unconditional consent for compounding offence at the behest of the respondent, the learned trial Court fell in error in passing the impugned order dated 01.02.2022.

7. I have heard learned counsel for the parties and perused the case file with their able assistance.

8. Before advertent to the controversy at hand, it is apt to reproduce Section 138 of the NI Act, which is 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."

9. 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. A two Judge Bench of 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. Speaking through Justice R.V. Raveendran, the following was observed:-

"15. 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."

10. The nature of offence under Section 138 of the NI Act and the purpose of the said Act was examined by a three Judge Bench of the Hon'ble Supreme Court in **P. Mohanraj and others Vs. Shah Brothers Ispat Private Limited (2021) 6 SCC 258** wherein speaking through Justice R.F. Nariman, it was observed as under:-

"53. A perusal of this judgment in Ishwarlal Bhagwandas [**S.A.L. Narayan Row v. Ishwarlal Bhagwandas, (1966) 1 SCR 190: AIR 1965 SC 1818**] would show that a civil proceeding is not necessarily a proceeding which

begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act."

A three Judge Bench of the Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal (2010) 5 SCC 663** has held as under:-

"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.

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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 Criminal Procedure Code, 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.

19. As mentioned earlier, the learned Attorney General's submission is that in the absence of statutory guidance, parties are choosing compounding as a method of last resort instead of opting for it as soon as the Magistrates take cognizance of the complaints. One explanation for such behaviour could be that the accused persons are willing to take the chance of progressing through the various stages of litigation and then choose the route of settlement only when no other route remains. While such behaviour may be viewed as rational from the viewpoint of litigants, the hard facts are that the undue delay in opting for compounding contributes to the arrears pending before the courts at various levels. If the accused is willing to settle or compromise by way of compounding of the offence at a later stage of litigation, it is generally indicative of some merit in the complainant's case. In such cases it would be desirable if parties choose compounding during the earlier stages of litigation. If however, the accused has a valid defence such

as a mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums.

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23. We are also in agreement with the Learned Attorney General's suggestions for controlling the filing of multiple complaints that are relatable to the same transaction. It was submitted that complaints are being increasingly filed in multiple jurisdictions in a vexatious manner which causes tremendous harassment and prejudice to the drawers of the cheque. For instance, in the same transaction pertaining to a loan taken on an installment basis to be repaid in equated monthly installments, several cheques are taken which are dated for each monthly installment and upon the dishonor of each of such cheques, different complaints are being filed in different courts which may also have jurisdiction in relation to the complaint. In light of this submission, we direct that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200 of the Criminal Procedure Code. If it is found that such multiple complaints have been filed, orders for transfer of the complaint to the first court should be given, generally speaking, by the High Court after imposing heavy costs on the complainant for resorting to such a practice. These directions should be given effect prospectively."

11. 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."

12. Once the offence under Section 138 of the NI Act has been made compoundable and the recovery of the cheque amount has already been effected, there would be no justification to make the petitioners suffer the ordeal of trial. The trial Courts are burdened with huge pendency of complaints under Section 138 of the NI Act and therefore, the Courts should

encourage the parties to settle their disputes amicably to avoid the suffering of protracted trial and further to unclog the trial Courts battling with huge pendency of such cases.

13. A two Judge Bench of the Hon'ble Supreme Court in **JIK Industries Limited and others Vs. Amar Lal Vs. Jumani and another (2012) 3 SCC 255** has examined the issue whether for 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."

14. In the present case, the respondent-complainant has accepted the cheque amount along with interest and costs of Rs.5000/- but later on made abrupt volteface and challenged the order of the trial Court before the Sessions Court in revision petition on the ground that her consent was not obtained for the purpose of compounding of the offence. Further, the grievance raised by the complainant was that she was not adequately compensated by the trial Court. A perusal of the order dated 01.02.2022 passed by the trial Court indicates that the accused was directed to pay the cheque amount plus Rs.5000/- as interest and costs to the complainant within two days of the order and complainant was directed to accept the same. It was further directed that if the complainant did not come forward to accept the same, then the said amount would be deposited in the court head and proceedings against the accused were ordered to be dropped. Initially, if the complainant was not willing to compound the offence and was aggrieved in any manner from the order of the trial Court, she ought not to have accepted the cheque amount along with interest and costs of Rs.5000/- and should have allowed the said amount to be deposited in the court head. The statement made by the complainant on 01.02.2022 is reproduced as under:-

"Stated that I have received demand draft bearing No.410737 dated 24.01.2022 amounting to Rs.5,78,125/- in complaint in cheque No.000081 today along with Rs.5000/- as interest and cost, in compliance of order of this Hon'ble Court dated 01.02.2022."

A perusal of the statement of the respondent-complainant indicates that she accepted the cheque amount of Rs.5,78,125/- along with Rs.5000/- as interest and costs. There was not even a whisper in the said statement that she accepted the amount under protest. In fact, the grounds of challenge before the Revisional Court were that consent of the complainant was not obtained before compounding the offence and she was not adequately

compensated is contrary to the statement she made before the trial Court on 01.02.2022.

15. On 03.05.2023, the petitioners had made a statement before this Court that they are ready to pay an interest @ 5% per annum on the amount mentioned in the cheque from the date of its issuance till its realization and the learned senior counsel appearing for the petitioners has submitted that petitioners shall abide by the said statement.

16. In view of the aforesaid facts and circumstances and the ratio of law as referred to above, much less, keeping in view the object and purpose of enactment of the NI Act being primarily compensatory and the punitive element only being a tool to enforce the compensatory element, the petitioners are directed to pay interest @5% per annum on the cheque amount from the date of issuance of the cheque till its realization and the respondent-complainant in each case is directed to accept the same. The amount shall be calculated and paid to the respondent-complainant before the trial Court within a period of two weeks from the date of receipt of certified copy of this order. This Court is of the opinion that with the aforesaid directions, the respondent-complainant would be adequately compensated and therefore, no purpose would be served in keeping the complaint pending before the trial Court.

17. The orders dated 13.01.2023 passed by the Revisional Court are hereby set aside. Accordingly, on payment of the amount calculated towards interest @5% annum on the cheque amount from the date of issuance of the cheque till the payment is made by the petitioners in each case, proceedings in all complaints pending before the concerned trial Court(s) against the petitioners shall be dropped as compounded.

18. All petitions stand disposed of in above terms.

19. Pending misc. application(s), if any, also stand disposed of in all petitions.

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