

CRR-360-2025 (O&M)

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CNR No: PHHC010137362025

2026:PHHC:114800



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

CRR-360-2025 (O&M)

Date of Decision:17.08.2026

Harjit Singh

...Petitioner

Vs.

Karamjit Kaur

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Sumit Saddi, Advocate
for the applicant-petitioner.

Mr. A.D.S Sukhija, Sr. Advocate assisted by
Mr. Sukhdeep Singh, Advocate
Mr. Hemesh Aggarwal, Advocate
Mr. Tej Kiran Bhullar, Advocate
Mr. Ishkaran, Advocate
Mr. Karanvir Singh, Advocate
for the respondent.

N.S.Shekhawat J.

1. On the oral request made by learned counsel for the petitioner, the main case is ordered to be preponed and is taken on board today itself.
2. The present revision petition has been filed before this Court with a prayer to quash the judgment of conviction and order of sentence dated 12.01.2017, passed by the Court of Sub-Divisional Judicial Magistrate, Dera Bassi, whereby, the petitioner was held guilty for committing the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act" and was sentenced to undergo Rigorous Imprisonment for a period of 02 years and to pay a fine of Rs.10,000/- and in default of payment of fine, he would further undergo S.I for a period of three months and

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also against the impugned judgment dated 10.12.2024, passed by the Court of Additional Sessions Judge, SAS Nagar, Mohali, whereby, the appeal filed by the petitioner was ordered to be dismissed.

3. The brief facts of the present case are that respondent/complainant had filed the complaint under Section 138 of the “Act” with the averments that the petitioner had entered into an agreement with the respondent to purchase the land measuring 4 killas and petitioner paid the sale consideration amount by way of cheque. Since the transaction was cancelled and the said cheque given to the respondent was returned to the petitioner. Thereafter, petitioner entered into fresh transaction with the respondent and Balbir Kaur for purchase of land measuring 2 ½ killas i.e. two acres belonging to Balbir Kaur and half acre belonging to respondent. Since the date for the execution of the sale deed was about to expire and petitioner was well-known to the respondent, therefore, the petitioner requested to execute the sale deed in the name of his brother-inlaw and promised to make the payment within short-time. There being cordial relations between the parties, respondent believed words of petitioner and executed the sale deed as desired by the petitioner. Lateron, petitioner started dilly dallying the matter on one pretext or the other. When respondent was about to take legal action against the petitioner, petitioner issued cheque bearing no. 666911 dated 01.08.2012 in the sum of ₹3 crores as part payment in favour of the respondent and he promised to make the remaining payment later on. The said cheque was dishonoured vide memo dated 08.08.2012 with remarks of “Funds Insufficient”. After receiving the information, respondent approached the petitioner and informed him about dishonour of cheque and petitioner requested the respondent to present the cheque again with the assurance that the

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same will be encashed this time. But cheque was again dishonoured vide memo dated 11.08.2012 with the remarks of “Funds Insufficient”. Respondent issued legal notice dated 22.08.2012 (dispatched on 23.08.2012). Another legal notice was issued on fresh address on 27.08.2012 (dispatched on 28.08.2012) but still the petitioner did not make the payment within prescribed period and hence, the complaint was filed by the respondent.

4. After completion of trial, the petitioner was held guilty for 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 02 years and to pay a fine of Rs.10,000/- and in default of payment of fine, he would further undergo S.I for a period of three months and no compensation was awarded to the respondent. The petitioner/accused filed an appeal before the Court of Additional Sessions Judge, SAS Nagar, Mohali and vide the impugned judgment dated 10.12.2024, the Court of Additional Sessions Judge, SAS Nagar, Mohali upheld the impugned judgment and order passed by the Trial Court with a slight modification that the petitioner was undergo Simple Imprisonment for a period of two years inspite of Rigorous imprisonment of two years.

5. In the present case, after hearing learned counsel for the parties, the only question at this stage, which requires determination is that what should be the approach of the Trial Court as well as the Appellate Court while awarding the punishment to an accused, who has been convicted for commission of the offence punishable under Section 138 of the “Act”.

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6. While discussing the similar issue, this Court in the matter of “Jugjit Kaur Vs. Rajwinder Singh,” CRR No.151-2025, decided on 10.03.2025, held as follows:-

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. x x x x x
- 11. x x x x x

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.*

7. In the present case also, it is apparent that the Trial Court as well as the Appellate Court had miserably failed to take into account the peculiar facts and circumstances of the present case and had wrongly imposed a fine of Rs.10,000/- only under Section 138 of the “Act” and in default of payment of fine, the petitioner had been directed to further undergo Simple Imprisonment for a period of three months and no amount of compensation was awarded. Thus, the respondent/complainant had even been deprived of an amount of Rs.3,00,00,000/-, which had become payable to him on 01.08.2012, i.e. about 14 years ago.

8. Consequently, the present revision petition is allowed and the order on quantum of sentence dated 12.01.2017, passed by the Court of Sub-Divisional Judicial Magistrate, Dera Bassi and the judgment dated 10.12.2024, passed by the Court of Additional Sessions Judge, SAS Nagar, Mohali, are set-

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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 preposition discussed and the observations made hereinabove.

9. It is expected that the Trial Court shall hear the parties afresh, before imposing the sentence on the petitioner.

10. Since, the petitioner is in custody, he shall be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the 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.

11. The parties as well as learned counsel for the parties are directed to appear before the Trial Court on **27.09.2026**.

12. Pending application(s), if any, stand(s), disposed of, accordingly.

17.08.2026
hitesh

(N.S.SHEKHAWAT)
JUDGE

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