



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc. Application No. 181/2026

Santosh Dangi S/o Chagan Dangi, Aged About 38 Years, Owner
Hopes Square Studio R/o 607, Mangalam Fun Square, Durga
Nursery Road, Dist. Udaipur. Second Residence- Santosh Dangi
S/o Shri Chagan Dangi, R/o Noka, Near Hanuman Temple, Dist.
Udaipur (Raj)

-----Petitioner

Versus

1. Firm M/s Royal Sanitary, 12, Otswal Plaza, First
Sundarwas,, Dist. Udaipur
2. State Of Rajasthan, Through Pp

-----Respondents

For Petitioner(s) : Mr. Tushar Moad
For Respondent(s) : Mr. N.S. Chandawat, DyGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

19/03/2026

1. The law, while empowered to curtail liberty in accordance with established procedure, cannot permit such curtailment to rest solely on economic incapacity, for poverty cannot be transmuted into a ground for incarceration. Liberty, though subject to lawful restraint, cannot be rendered contingent upon the ability to pay. The issue that arises for consideration is whether, in a case where the underlying dispute stands settled, continued incarceration can be sustained merely because the accused is unable to comply with a condition of costs.



2. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023), seeking modification of the condition imposed by a co-ordinate Bench of this Court vide order dated 22.11.2024 passed in S.B. Criminal Revision Petition No. 1457/2024, whereby, while permitting compounding of the offence under Section 138 of the Negotiable Instruments Act, 1881, the petitioner was directed to deposit 15% of the cheque amount as costs in terms of the judgment rendered in ***Damodar S. Prabhu v. Sayed Babalal H*** reported in **(2010) 5 SCC 663**.

3. The petitioner stood convicted by the learned Special Judicial Magistrate (N.I. Act Cases) No.6, Udaipur, vide judgment dated 15.02.2024 passed in Criminal Regular Case No. 7831/2018 for an offence under Section 138 of the Act of 1881. The appeal preferred thereagainst came to be dismissed vide judgment dated 11.07.2024. During pendency of the revision petition before this Court, the parties amicably settled their dispute.

4. Taking note of the compromise, this Court permitted compounding of the offence and set aside the conviction and sentence, subject to the condition that the petitioner shall deposit 15% of the cheque amount as costs.

5. It is not in dispute that the petitioner could not comply with the aforesaid condition. Consequently, the learned trial Court vide order dated 06.03.2026 issued arrest warrant against the petitioner for non-compliance of the order dated 22.11.2024 and





the petitioner was taken into custody, where he presently remains confined. It is, thus, evident that the petitioner's incarceration is a direct consequence of non-compliance of the condition imposed by this Court and not on account of any subsisting adjudication of guilt.

6. Learned counsel for the petitioner submits that the dispute between the parties stands fully settled and the complainant has no surviving grievance. It is contended that the petitioner's continued incarceration is, in substance, solely attributable to his inability to deposit the costs and not to any subsisting criminal liability. It is urged that such deprivation of liberty is disproportionate and violative of Article 21 of the Constitution of India.

7. Learned Public Prosecutor, while supporting the legality of the earlier order, submits that the consequence of non-compliance of the condition imposed in terms of the judgment in the case of *Damodar S. Prabhu (supra)* follows.

8. Heard learned counsel for the parties and perused the material placed on record.

9. The question that arises for consideration is whether, in a case where the dispute stands admittedly settled and the complainant has accepted the compromise, the continued incarceration of the petitioner can be sustained when the only impediment to giving effect to such settlement is the petitioner's inability to deposit the costs.





10. The Hon'ble Supreme Court in *Damodar S. Prabhu v. Sayed Babalal H.* (supra) evolved a graded scheme of costs with the object of encouraging early compounding and discouraging delayed settlements in proceedings under Section 138 of the Act of 1881. The costs so contemplated are regulatory and deterrent in nature. They are ancillary to the process of compounding and cannot be equated with a substantive penal consequence. Being part of a judicially evolved guideline, their application necessarily admits of flexibility depending upon the facts of each case.

11. The aforesaid position now stands further clarified by the Hon'ble Supreme Court in ***Rajeev Khandelwal v. State of Maharashtra & Anr.*** [arising out of SLP (Crl.) **No.14340/2025, order dated 04.11.2025**], wherein, in a similar fact situation arising out of a conviction under Section 138 of the Act of 1881 followed by settlement at the revisional stage, the imposition of costs based on *Damodar S. Prabhu* was set aside. The Hon'ble Supreme Court held that the guidelines relating to costs in *Damodar S. Prabhu* are not mandatory and are required to be applied having regard to the facts of each case, including the financial capacity of the accused and the stand of the complainant. It was further observed that where the complainant has no objection to the settlement and the accused demonstrates inability to comply, insistence on payment of such costs would be unjustified.





12. The sweep of Article 21, as expounded in ***Maneka Gandhi v. Union of India*** reported in **(1978) 1 SCC 248**, mandates that any deprivation of liberty must be just, fair and reasonable.

13. In ***Jolly George Varghese v. Bank of Cochin*** reported in **(1980) 2 SCC 360**, the Hon'ble Supreme Court underscored that deprivation of liberty for non-payment of money is impermissible unless there exists a finding of wilful refusal despite sufficient means.

14. In the present case, there is no material on record to indicate that the petitioner has deliberately avoided payment despite possessing the capacity to do so. The case set up by the petitioner is one of financial incapacity.

15. Though the petitioner's custody is formally referable to the revival of conviction, the undisputed position is that the dispute stands settled, the complainant has accepted the compromise, and the petitioner is in custody solely on account of non-compliance of the condition relating to deposit of costs. Thus, in substance, the petitioner's continued incarceration is traceable to his inability to deposit the costs.

16. The offence under Section 138 of the Act of 1881 is primarily compensatory in character. Once the complainant stands satisfied, continuation of incarceration solely on account of non-payment of costs would be disproportionate and would defeat the very object of compounding. To permit such a consequence would be to allow a regulatory condition to assume the character of a coercive deprivation of liberty, which is impermissible.





17. It is well settled that this Court, in exercise of criminal jurisdiction, does not possess the power to review its own final order in view of the bar contained in Section 362 Cr.P.C. (Section 401 BNS). However, the present exercise does not partake the character of a review of the earlier order passed by a coordinate Bench, but is confined to examining the consequence of the condition imposed therein, in the light of subsequent events and its impact on the petitioner's personal liberty. The inherent jurisdiction of this Court can always be invoked to secure the ends of justice and to prevent abuse of process, particularly where a condition, though valid at the time of its imposition, operates in a manner resulting in manifest injustice. In the considered opinion of this Court, the present case warrants exercise of such jurisdiction so as to prevent the condition of costs from operating in a manner that results in incarceration solely on account of financial incapacity.

18. Where a prosecution under Section 138 of the Negotiable Instruments Act stands settled and the complainant has no subsisting grievance, continued incarceration of the accused, arising solely from non-compliance of a condition of costs imposed for compounding, cannot be sustained in the absence of wilful default. Costs contemplated under *Damodar S. Prabhu*, being regulatory in nature, cannot be enforced in a manner that results in deprivation of personal liberty on account of financial incapacity, particularly when the settlement stands accepted and acted upon, a position reinforced by the decision of the Hon'ble Supreme Court





in *Rajeev Khandelwal v. State of Maharashtra & Anr.* (order dated 04.11.2025).

19. As a consequence of the above discussion, the instant criminal miscellaneous application is allowed. The condition imposed by this Court vide order dated 22.11.2024 in S.B. Criminal Revision Petition No. 1457/2024, directing the petitioner to deposit 15% of the cheque amount as costs, is hereby waived in entirety, and the order dated 22.11.2024 passed in S.B. Criminal Revision Petition No. 1457/2024 shall be given full and final effect.

20. Consequently, the order dated 06.03.2026 passed by the learned Special Judicial Magistrate (N.I. Act Cases) No.6, Udaipur, issuing arrest warrant and committing the petitioner to custody, is set aside.

21. The petitioner, who is in custody, shall be released forthwith, if not required in any other case.

(FARJAND ALI),J

371-Pramod/-

