

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. Revision No. 356 of 2017

Decided on: June 29, 2018

Dule Ram	VersusPetitioner
Mayadhar		...Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting¹?

For the petitioner: Mr. Goldy Kumar, Proxy Counsel.

For the respondent: Ms. Kalpana Sharma, Proxy Counsel.

Sandeep Sharma, J. (Oral)

By way of instant revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, challenge has been laid to judgment dated 24.10.2017 passed by learned Additional Sessions Judge, Kullu, HP in Criminal Appeal No. 11 of 2017, affirming the judgment/order of conviction dated 10.11.2016/11.11.2016 passed by the learned Addl. Chief Judicial Magistrate, Kullu, Himachal Pradesh in Complaint No. 89-I/2012/1204-I/2013 (old) 290-I/2016/290-III/2016(new), whereby learned trial Court, while holding the petitioner-accused guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo simple imprisonment for a period of three months and pay compensation to the tune of s. 3,70,000/- to the complainant.

Whether reporters of the Local papers are allowed to see the judgment? .

2. Necessary facts, as emerge from the record are that respondent-complainant (hereinafter, 'complainant') filed a complaint under Section 138 of the Act *ibid* in the court of learned Chief Judicial Magistrate, Kullu, alleging therein that on 25.1.2011, accused purchased 10,000 apple saplings (nursery plants) for ₹ 25/- per plant, total amounting to ₹2,50,000/- and also borrowed ₹ 20,000/-. Accused assured that payment shall be made within a period of 4-5 months, however, facts remains that accused issued cheque qua aforesaid amount but same was dishonoured on its presentation to the bank concerned. Since accused despite having received legal notice issued by complainant, failed to make payment within the stipulated time, complainant was compelled to initiate proceedings under Section 138 of the Act. Learned trial Court on the basis of evidence adduced on record by the respective parties, held accused guilty of having committed offence punishable under Section 138 of the Act and accordingly convicted and sentenced the accused as per description given hereinabove.

3. Being aggrieved and dissatisfied with the judgment of conviction recorded by the learned trial Court, accused preferred an appeal under Section 374 CrPC in the court of learned Additional Sessions Judge, Kullu, which was also dismissed, consequently, judgment of conviction recorded by the learned trial Court came to be upheld. In the aforesaid background, accused has approached this Court in the instant proceedings, seeking acquittal after setting aside judgment of conviction recorded by court below.

4. During the pendency of the present petition before this Court, learned counsel representing the petitioner made a statement at Bar that parties are in the process of settling the matter amicably *inter se* them and as such, some time may be granted to them.

5. Today, learned counsel representing the parties, on the instructions of their respective clients, who are present in the court, stated that entire amount in terms of judgment passed by learned trial Court stands paid to the complainant, as such, instant case can be ordered to be compounded in terms of judgment of Hon'ble Apex Court in ***Damodar S. Prabhu v. Sayed Babalal H. (2010) 5 SCC 663.***

6. parties have also placed on record a joint application under Section 147 of the Act *ibid* read with Section 482 CrPC, praying therein for compounding offence punishable under Section 138 of the Act. Though, averments contained in the petition as well as application referred to herein above clearly suggest that parties have amicably settled the matter *inter se* them but this Court solely with a view to ascertain the correctness and genuineness of the submissions having been made by the learned counsel representing the parties, also recorded the statement of complainant on oath, who stated that he, of his own volition, without there being any external pressure has entered into compromise with the accused and in terms of compromise he has received entire payment in terms of judgment of learned trial Court and has no objection in case judgments of

conviction passed by learned Courts below are set aside and petitioner-accused is acquitted of the offence under Section 138 of the Act.

7. Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court (supra), judgment dated 24.10.2017 passed by learned Additional Sessions Judge, Kullu, HP in Criminal Appeal No. 11 of 2017, and judgment/order of conviction dated 10.11.2016/11.11.2016 passed by the Ld. Addl. Chief Judicial Magistrate, Kullu, Himachal Pradesh in Complaint No. 89-I/2012/1204-I/2013 (old) 290-I/2016/290-III/2016(new) are set-aside and the petitioner-accused is acquitted of the charges framed against him. Bail bonds furnished by the petitioner are discharged.

8. The petition is disposed of in aforesaid terms, alongwith all pending applications, if any.

(Sandeep Sharma)
Judge

June 29, 2018
(Vikrant)