

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Revision No. 214 of 2017
Date of Decision: 28.2.2019.**

Shyam Sunder

.....Petitioner.

Versus

Karam Chand

.....Respondent.

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting¹?

For the petitioner: Mr. Sanjeev Kuthiala, Advocate.

For the respondent: Mr. Sunil Mohan Goel, Advocate.

Sandeep Sharma, J. (Oral)

By way of instant criminal revision petition filed under Section 397, challenge has been laid to judgment dated 12.6.2017, passed by the learned Additional Sessions Judge, Kullu, District Kullu, H.P., in Criminal Appeal No. 2 of 2017, affirming judgment of conviction and sentence dated 18.10.2016, recorded by the learned Additional Chief Judicial Magistrate, Kullu, in complaint No. 38-1/2013 (old) and 312-1/2016/ 312/III/16 (new), whereby the learned trial Court while holding the petitioner-accused guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act (in short the "Act"), convicted and sentenced him to undergo simple imprisonment for a period of six months and to pay compensation to the tune of Rs.7,60,000/- to the complainant and in default, further simple imprisonment for a period of two months.

2. Precisely the facts, as emerge from the record are that respondent-complainant preferred a complaint under Section 138 of the Act, before the learned Additional Chief Judicial Magistrate, Kullu, H.P., against the

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

present petitioner-accused, alleging therein that he had lent sum of Rs. 6,00,000/- to the accused in the month of January, 2013, on his demand to develop his business on the assurance that he would return the same within a period of two months. But subsequently, on 5.3.2013, accused with a view to discharge his liability issued cheque bearing No.021836 amounting to Rs. 6,00,000/- dated 5.3.2013, drawn at State Bank of Patiala, Branch Patlikuhal, District Kullu, H.P. in favour of the complainant, however, fact remains that the aforesaid cheque was dishonoured on its presentation on account of insufficient funds. Since petitioner-accused failed to make the payment good within the stipulated period despite issuance of legal notice, respondent/complainant was compelled to initiate proceedings before the competent Court of law under Section 138 of the Act.

3. Learned trial Court on the basis of material adduced on record by the respective parties held the petitioner-accused guilty of having committed offence under Section 138 of the Act and accordingly, sentenced him as per the description given herein above.

4. Being aggrieved and dis-satisfied with the aforesaid judgment of conviction recorded by the court below, accused preferred an appeal in the court of learned Additional Sessions Judge, Kullu, H.P., which also came to be dismissed vide judgment dated 12.6.2017, as a consequence of which, judgment of conviction recorded by the learned trial Court came to be upheld. In the aforesaid background, present petitioner-accused has approached this Court by way of instant proceedings, seeking therein his acquittal after setting aside the judgments of conviction recorded by the courts below.

5. During the pendency of the case, learned counsel for the parties on instructions of their respective clients informed that parties are in process of settling their dispute inter-se them and as such, they were directed to remain present before this Court on 17.4.2018. On 17.4.2018, Mr. Sanjeev Kuthiala, learned counsel, on instructions, informed that petitioner is ready and willing to give sum of Rs. 6.5 lac in two installments. He stated that in terms of order dated 31.7.2017, passed by this Court 50% of compensation amount already stands deposited before the learned trial Court, whereas remaining amount would be deposited by the petitioner on or before 31.8.2018. Mr. Sunil Mohan Goel, learned counsel representing the respondent-complainant though stated that respondent is ready and willing to accept aforesaid proposal made by the petitioner-accused, but he should be adequately compensated over and above, the aforesaid amount because of undue harassment caused to him. Accordingly, this Court on 17.4.2018, while directing the court below to release 50% amount lying deposited with it in favour of respondent-complainant directed the petitioner-accused to make the balance payment.

6. On 10.9.2018, petitioner-accused, who had come present in the Court, informed that sum of Rs. 2.5 lac stands paid to the complainant, whereas he would be making balance payment of Rs. 3.5 lac on or before 30.11.2018.

7. On 10.12.2018, this Court was informed by the learned counsel for the petitioner-accused that due to bereavement in the family of the petitioner, amount of Rs. 3.5 lac, as agreed could not be paid on or before the said date, but he handed over sum of Rs. 1.75 lac to Mr. Sunil Mohan Goel, learned counsel for the respondent-complainant, and prayed that he be given some

more time to pay remaining amount i.e. Rs. 1.75 lac. Accordingly, on his prayer matter came to be adjourned for today enabling the petitioner-accused to make the balance payment.

8. Today during the proceedings of the case, petitioner, who has come present in the Court, has handed over sum of Rs. 1.75 lac to Shri Sunil Mohan Goel, learned counsel. Mr. Sanjeev Kuthiala, learned counsel, for the petitioner-accused states that since complete payment, in terms of judgment passed by the learned trial court, stands paid to the respondent-complainant, offence be compounded in terms of law laid down by the Hon'ble Apex Court in ***Damodar S. Prabhu V. Sayed Babalal H. (2010) 5 SCC 663.***

9. Mr. Sunil Mohan Goel, learned counsel, after having received aforesaid amount fairly states that since entire amount in terms of judgment passed by the court below, stands received by the complainant, prayer made on behalf of the petitioner for compounding of offence, may be accepted.

10. Having taken note of the fact that complete amount in terms of judgment passed by the learned trial Court, stands paid to the respondent-complainant, this Court sees no impediment in accepting the prayer made having been made by the petitioner for compounding of offence while exercising power under Section 147 of the Act. Hon'ble Apex Court in ***Damodar S. Prabhu*** case (*supra*), has categorically held that court, while exercising power under Section 147 of the Act, can proceed to compound the offence even after recording of conviction by the courts below.

11. Consequently, in view of the above, present matter is ordered to be compounded and impugned judgments passed by the courts below are quashed and set-aside and the petitioner-accused is acquitted of the charges

framed against him under Section 138 of the Act. Interim order is vacated. Bail bonds, if any, discharged. Accordingly, the petition is disposed of alongwith pending applications, if any.

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28th February, 2019

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**(Sandeep Sharma),
Judge.**