

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Cr. Revision No. 251 of 2011

Date of decision: 31.12.2019

Raghuvir Singh Jistu.		...Petitioner
	Versus	
M/s ICICI Bank.		...Respondent

Coram
The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.
Whether approved for reporting?¹

For the Petitioner: ***Mr.Diwan Chand, Advocate.***

For the Respondent: ***Mr.Vijay Kumar Verma, Advocate.***

Vivek Singh Thakur J. (Oral).

Present Revision Petition has been filed assailing judgment dated 9.11.2011, passed by learned Additional Sessions Judge, Shimla District Shimla, H.P., in Cr. Appeal No. 26-S/10 of 2010, whereby judgment/order dated 10.2.2010, passed by learned Judicial Magistrate, 1st Class, Court No. (2), Shimla, District Shimla, H.P., in Criminal Complaint No. 163-3 of 2008, convicting and sentencing the petitioner-accused to undergo simple imprisonment for three months and to pay compensation of ₹68,320/-, to the complainant, has been affirmed.

2. Statements of learned counsel representing petitioner as well as respondent have been recorded.

3. Mr.Diwan Singh Negi, Advocate, learned counsel representing the petitioner in his statement has deposed that he is competent and duly authorized to make statement on behalf of petitioner and has instructions to say that petitioner has deposited the cheque amount in the trial Court i.e. Judicial Magistrate, 1st Class, Court No. 2 and the said amount has been invested by the trial Court in two FDRs

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

bearing No. 28220310038574 and 28220310038422 in UCO Bank, Chakkar, Shimla and to say that for compounding the case, petitioner is ready to release the amount deposited by him in favour of respondent/complainant-bank, against his loan account No.LVSM00004277052 and the respondent-Bank has accepted the offer and has consented for compounding the present case, therefore, he on behalf of petitioner has prayed for compounding the case by releasing the amount deposited by petitioner in Complaint Case No. 163-3 of 2008, titled M/s ICICI Bank Ltd. Vs. Raghuvir Singh. He has further stated that he has deposed strictly in consonance with the instructions imparted to him by petitioner.

4. Mr.Vijay Kumar Verma, Advocate, representing respondent-complainant Bank in his statement has deposed that he is competent and duly authorized to make statement on behalf of respondent-complainant and has instructions to communicate no objection for compounding the case, subject to release of amount of ₹68,320/- along with up to date interest in favour of respondent-complainant Bank against the loan account of petitioner bearing No. LVSM00004277052. He has further stated that he has deposed strictly in consonance with the instructions imparted to him.

5. Consequently, respondent/complainant is permitted to withdraw the complaint and matter is compounded and complaint arising out of dishonor of cheque, under Section 138 of the Negotiable Instruments Act, is treated to be withdrawn and judgments of conviction and sentence passed by the Courts below are quashed and set aside. Petitioner-accused is acquitted of the accusation framed against him, subject to payment of compounding fee.

6. Learned counsel for the petitioner has submitted that petitioner is facing acute financial problem and therefore, he could not arrange the amount to make payment well in time, therefore, considering the ratio of law laid down by the Apex Court in ***Damodar S. Prabhu Vs. Sayed Babalal H. 2010 (5) SCC 663*** as clarified in ***Madhya Pradesh State Legal Services Authority Vs. Prateek Jain and another 2014 (10) SCC 690***, compounding fee may be exempted or a lesser amount may be imposed.

7. Considering the entire facts and circumstances of the case, instead of 15% of the cheque amount, petitioner/accused is directed to deposit ₹4,000/- as compounding fee with the H.P. State Legal Services Authority, Shimla on or before **4th February, 2020**.

8. After depositing compounding fee/cost, petitioner shall place a copy of receipt of deposit of compounding fee on record of this petition. In case of default in depositing compounding fee/cost with the H.P. State Legal Service Authority, Shimla on or before 4th February, 2020, the judgments of conviction and sentence shall automatically revive.

9. As the petitioner has deposited the entire compensation amount of ₹68,320/- in the trial Court, i.e. Judicial Magistrate 1st Class, Court No. (2), Shimla, District Shimla, H.P., therefore, trial Court is directed to release the said amount along with up-to-date interest, if any, deposited by the petitioner/accused, in favour of respondent/complainant ICICI Bank Limited., by remitting the same in loan account bearing No. LVSHM00004277052, of petitioner/accused, immediately on production of copy of this judgment, without issuing any notice to the petitioner/accused Raghuvir Singh.

10. Petition stands disposed of, in the aforesaid terms, so also the pending application(s), if any.

11. Copy of this judgment be sent to H.P. State Legal Service Authority, Shimla.

Copy **Dasti**.

31st December, 2019
(Keshav)

(Vivek Singh Thakur),
Judge.