

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Cr. Revision No. 460 of 2018

Date of decision: 30.9.2019

Prem Kumar.

...Petitioner

Versus

Pawan Kumar and Another.

...Respondents

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹

For the Petitioner:

*Ms.Tim Saran, Advocate.
Petitioner Prem Kumar in person.*

For the Respondent:

*Mr.Parveen Kumar, for respondent No. 1.
Respondent Pawan Kumar present in person.*

*Mr.S.C. Sharma and Mr.Desh Raj Thakur,
Additional Advocate Generals, with Mr.R.P.
Singh and Mr.Kamal Kant Chandel, Deputy
Advocate Generals, for respondent No. 2.*

Vivek Singh Thakur J. (Oral).

Present Revision Petition has been filed assailing judgment passed by learned Sessions Judge-1 Mandi, District Mandi, H.P. in Cr. Appeal No. 46 of 2018, dated 6.9.2018, whereby judgment of conviction and sentence dated 2.1.2018, passed by learned Judicial Magistrate 1st Class, Karsog, District Mandi, H.P., in Criminal Complaint No. 41 of 2016, convicting and sentencing the petitioner-accused to undergo simple imprisonment for three months and to pay compensation of ₹1,00,000/-, to the complainant, has been affirmed.

2. Petitioner Prem Kumar and complainant-respondent No. 1 Pawan Kumar are present in person, who have been identified by their learned counsel. Their statements have been separately recorded on oath and placed on the file.

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

3. Respondent No. 1/complainant has stated that matter has been amicably settled with petitioner Prem Kumar and as per compromise everything has been settled, except release of ₹60,000/- deposited by Prem Kumar in the Courts i.e. ₹10,000/- in the Court of Judicial Magistrate, 1st Class, Karsog and ₹50,000/- in the Registry of this Court and in case the said amount is released in his favour, nothing shall be due to be recovered from Prem Kumar and in turn he has agreed to withdraw the complaint filed by him for compounding the matter and therefore, the aforesaid amount of ₹60,000/- be ordered to be released in his favour by remitting the same in his Saving Bank Account No. 65095904739, IFSC Code SBIN0050566, SBI Kot Alsindi, Dharmour, Karsog. He has stated that he has deposed in this Court today out of his free will, consent and without any external pressure, coercion or threat of any kind.

4. Petitioner/accused Prem Kumar in his statement recorded on oath, has endorsed the amicable settlement with complainant Pawan Kumar, stating that as per compromise, the complainant has agreed to withdraw the complaint and, amount deposited by him in the Courts i.e. ₹10,000/- in the Court of Judicial Magistrate, 1st Class, Karsog and ₹50,000/- in the Registry of this Court, is to be released in favour of complainant Pawan Kumar and he has no objection for release of the same in his favour. He has stated that he has deposed in this Court today out of his free will, consent and without any external pressure, coercion or threat of any kind.

5. Consequently, respondent No. 1/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 prayed for exemption for payment of compounding fee on account of financial condition of petitioner/accused. It is stated that because of paucity of funds, he had borrowed the money for house hold expenses and he has managed to pay it by arranging from here and there and he is not in a position to pay compounding fee and prayer for exemption of compounding fee has been made in view of 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***.

7. Considering the entire facts and circumstances of the case, instead of 15% of the cheque amount, petitioner/accused is directed to deposit ₹3,000/- as compounding fee with the H.P. State Legal Services Authority, Shimla on or before **6th November, 2019**.

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 6th November, 2019, the judgments of conviction and sentence shall automatically revive.

9. As the petitioner has deposited ₹10,000/- in the trial Court, Learned Judicial Magistrate 1st Class, Karsog and ₹50,000/- in the Registry of this Court. Therefore, Judicial Magistrate, 1st Class Karsog

is directed to release the amount of ₹10,000/-, along with up to date interest, if any, deposited by the petitioner/accused, in favour of respondent No. 1/complainant Pawan Kumar, by remitting the same in his Saving Bank Account No. 65095904739, IFSC Code SBIN0050566, SBI Kot Alsindi, Dharmour, Karsog, immediately on production of copy of this judgment, without issuing any notice to the petitioner/accused Pawan Kumar.

10. The Registry of this Court is also directed to release the amount of ₹50,000/- along with up to date interest, if any, in favour of complainant Pawan Kumar, by remitting the same in his Bank Account No. 65095904739, IFSC Code SBIN0050566, SBI Kot Alsindi, Dharmour, Karsog.

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

Copy **Dasti**.

30th September, 2019
(Keshav)

(Vivek Singh Thakur),
Judge.