

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ON THE 29<sup>TH</sup> DAY OF JULY, 2022

BEFORE  
HON'BLE MR. JUSTICE SANDEEP SHARMA

CRIMINAL REVISION NO.225 OF 2021

Between:

SH. RAMESH KUMAR SON OF SH.  
RAMJITU, RESIDENT OF VILLAGE  
SAMOG, P.O BHAUNT SANGTI, SUMMER  
HILL, SHIMLA.

....PETITIONER

(BY MR. NARESH K. GUPTA, ADVOCATE)

AND

M/S BHODHA MALL KHUSHI RAM  
THROUGH ITS PARTNER PRASHANT  
MARIA, 73/5 RAM BAZAR, SHIMLA.

....RESPONDENT

(MR. AMAN SOOD, ADVOCATE)

*Whether approved for reporting?*

---

*This petition coming on for orders this day, the Court passed the following:*

**ORDER**

Instant Criminal Revision Petition filed under Section 397 of the Code of Criminal Procedure, lays challenge to judgment dated 8.07.2021, passed by learned Additional Sessions Judge-cum-Special Judge(CBI) Shimla District Shimla, Himachal Pradesh, in Criminal Appeal No.1-S/10 of 2021, affirming the judgment of conviction dated 18.01.2020 and order of sentence dated 1.02.2020, passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Court No.4, Shimla, District Shimla, H.P., in Criminal case No.304-III/2019/16, whereby learned court below while holding petitioner-accused guilty of having committed

an offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo simple imprisonment for three months and pay compensation to the tune of Rs.1,30,000/-to the complainant for loss suffered by him.

2. Precisely, the facts of the case as emerge from the record are that respondent (***hereinafter referred to as the complainant***) instituted a complaint under Section 138 of the Negotiable Instruments Act (***for short Act***) before the Court of learned Judicial Magistrate, 1<sup>st</sup> Class, Court No.4, Shimla, District Shimla, H.P., alleging therein that he is running business of hardware and paints in the name and style of M/s Bhodha Mull Khushi Ram. He alleged that accused, who is a Government contractor, purchased paints related items from him vide bill No.337, dated 18.02.2016, amounting to Rs. 1,12,002/-, but failed to make the payment within 15 days. He further alleged that with a view to discharge his liability, accused issued cheque No. 665277, dated 16.09.2016, amounting to Rs.1,22,557/- drawn on State Bank of India, Summer Hill, Shimla. However, fact remains that on presentation aforesaid cheque was dishonoured on account of insufficient funds in the account of the accused. Since, despite having received notice accused failed to make the payment good within the time stipulated in the legal notice, complainant was compelled to initiate proceedings under Section 138 of the Act in the competent court of law.

3. Learned trial Court on the basis of the 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 him as per the description given hereinabove.

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence recorded by learned trial Court, petitioner-accused preferred an appeal in the Court of learned Sessions Judge-cum-Special Judge(CBI) Shimla, District Shimla, H.P., but same was also dismissed vide judgment dated 8.07.2021. In the aforesaid backdrop, petitioner-accused approached this Court in the instant proceedings, praying therein for his acquittal after setting aside the judgment of conviction and order of sentence recorded by Court below.

5. Vide order dated 27.09.2021, this Court suspended the substantive sentence imposed by learned court below, subject to petitioner's depositing 15% of the cheque amount and furnishing personal and surety bonds to the satisfaction of learned trial Court. Record reveals that aforesaid order stands duly complied with. Through, repeatedly matter came to be adjourned on the request of learned counsel for the petitioner, enabling the petitioner to make the balance payment, but every time petitioner failed to come present in Court on one pretext or other. However, today during the proceedings of the case, petitioner-accused has come present and handed over sum of Rs.70,000/- in cash to Sh. Prashant Maria partner of the firm.

6. Mr. Naresh K. Gupta, learned counsel representing the petitioner states that since entire amount as awarded by learned court below has been paid by the petitioner-accused to the respondent-complainant, this Court while

exercising power under Section 147 of the Act, may proceed to compound the offence and acquit the petitioner-accused of the charges framed against him.

7. Mr. Aman Sood, learned counsel representing the respondent-complainant, on instructions of the respondent-complainant, who is present in Court, while fairly admitting factum with receipt of Rs.70,000/- in cash, submits that through respondent-complainant is not averse to the prayer made on behalf of the petitioner-accused for compounding the offence, but since he has been unnecessarily dragged into litigation for realization of his own money, some amount may be awarded on account of litigation charges. Having taken note of the fact that the petitioner is ready and willing to make the entire amount of compensation as awarded by the Court below and in fact he has already paid Rs.70,000/- in cash and he has no objection in getting sum of Rs. 64,000/- lying deposited with trial Court released in favour of the respondent-complainant, this Court finds no impediment in accepting the prayer made in the application while exercising power under section 147 of the Act as well as in terms of the law laid down by the Hon'ble Apex Court in ***Damodar S. Prabhu v. Sayed Babalal H.(2015)5 SCC 663***, whereby it has been categorically held that Court exercising power under Section 147 of the Act can proceed to compound the offences even in those cases where accused stands convicted.

8. Accordingly, in view of the aforesaid discussion made hereinabove, instant matter is ordered to be compounded and judgment dated 8.07.2021, passed by learned Additional Sessions Judge-cum-Special Judge (CBI) Shimla District Shimla, Himachal Pradesh and the judgment of conviction

dated 18.01.2020 and order of sentence dated 1.02.2020, passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Court No.4, Shimla, District Shimla, H.P., in Criminal case No.304-III/2019/16, are quashed and set-aside. The petitioner-accused is acquitted of the charge framed against him under Section 138 of the Act. The bail bonds of the accused are ordered to be discharged.

9. However, having taken note of the fact that the respondent-complainant has been unnecessary dragged into the litigation by the petitioner for realization of his own money, this Court deems it fit to direct petitioner-accused to pay sum of Rs.20,000/- to the respondent-complainant as litigation charges within a period of six weeks, failing which, he shall render himself liable for penal consequences as well as proceedings under Contempt of Court. Liberty is reserved to the respondent-complainant to get the matter revived in case amount of litigation charges is not paid to him by the petitioner-accused.

10. Learned court below is directed to release sum of Rs.64,000/- in favour of the respondent-complainant, by remitting the same in his saving bank account, details whereof shall be furnished by learned counsel for the respondent-complainant within period of one week.

11. The petition is disposed of along with pending applications, if any. Interim orders, if any, stand vacated.

**29<sup>th</sup> July, 2022**  
(shankar)

**(Sandeep Sharma),**  
**Judge**