



IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Criminal Revision No.293 of 2021.

Date of Decision: December 15, 2022.

Rajinder Kumar

...Petitioner

Versus

Pushpa Devi

..Respondent

Coram

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

Whether approved for reporting?¹ Yes

For the Petitioner : Mr. G.R. Palsra, Advocate.

For the Respondent : Ms. Maan Singh, Advocate.

Vivek Singh Thakur, Judge

J U D G M E N T

Instant Revision Petition has been preferred against the judgment dated 26.10.2021 passed by Learned Additional Sessions Judge, Kullu, District Kullu, in Criminal Appeal No. 35 of 2019 titled as Rajinder Kumar versus Pushpa Devi, whereby judgment dated 16.11.2019 passed by Judicial Magistrate First Class, Manali, in Criminal Case No. 192 of 2017, titled as Pushpa Devi versus Rajinder Kumar has been affirmed, wherein petitioner has been convicted

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Whether reporters of Local Papers may be allowed to see the judgment?

Cr. Revision No. 293 of 2021 under Section 138 of Negotiable Instrument Act (NI Act) and sentenced to undergo simple imprisonment of four months and to pay fine of Rs. 50,000/- payable to the respondent-complainant as compensation.

2. Petitioner against amount of compensation of Rs. 50,000 has deposited Rs. 15,000/- in the trial Court and Rs. 40,000/- in the Registry of this Court and as such, he has deposited Rs. 55,000/- against amount of compensation of Rs. 50,000/-.

3. Petitioner had expressed his willingness for compounding the case by making payment additional payment of 10% of awarded compensation. To show his bonafide he was permitted to deposit Rs. 5,000/- in the Registry of this Court in addition to compensation amount. However, under instructions of the respondent-complainant learned counsel, representing her, has communicated refusal of respondent to consent for compounding the case.

4. Learned counsel for the petitioner referring pronouncement of the Supreme Court in ***Meters and Instruments Private Limited and another versus Kanchan Mehta (2018) 1 SCC 560*** has contended that in a case of Negotiable Instrument Act, even in absence of consent of complainant, the Court, in the interest of justice on being satisfied that complainant has been duly

compensated, can in its discretion close the proceedings and discharge the accused.

5. Learned counsel for the complainant referring ***JIK Industries Limited and others versus Amar Lal V. Jumani and another*** reported in 2012(3) SCC 255 has contented that though as a result of Section 147 of Negotiable Instrument Act offences under this Act have been made compoundable but main principle of such compounding, namely, the consent of the person aggrieved or the person injured or the complainant cannot be washed away nor can the same be substituted by virtue of Section 147 of Negotiable Instrument Act.

6. Learned counsel for the complainant to substantiate his plea has also referred order dated 16.04.2021 passed by five Judges Bench of the Supreme Court in suo-moto writ petition (CRL) No. (2) of 2020 in Re:- Expeditious trial of cases under Section 138 of the Negotiable Instrument Act, 1881 wherein it has been observed that judgment in *Meters and Instruments* (supra) conferring power on the trial Court to discharge an accused under Section 138 of Negotiable Instruments Act is not a good law.

7. Learned counsel for the petitioner submits that petitioner is 52% permanently physically disabled persons and he was suffering

Cr. Revision No. 293 of 2021 from financial problem and therefore, he could not arrange money for payment to the complainant, but immediately on arrangement of such money, he offered to pay 10% more than the compensation amount to the complainant for resolving the dispute amicably to compound the case and therefore, prayer, to allow compounding of the case in the interest of justice, has been made.

8. So far as observation in suo-moto Civil Writ Petition No. 2/20 are concerned as referred on behalf of the complainant, the same are based on the observation that Section 258 Cr.P.C. is not applicable in summons case instituted on complaint. Observations in this regard are related to power of the Trial Magistrate but not with respect to the inherent powers of the High Court.

9. Keeping in view the provisions of Section 147 of Negotiable Instruments Act coupled with inherent power of the High Court under Section 482 Cr.P.C., in the interest of justice, High Court is not precluded from compounding the case in absence of consent of complainant where complainant is duly compensated as Section 138 of the Negotiable Instrument Act does not provide that it is mandatory for the Court to sentence respondent-accused for imprisonment in all eventualities but there is option to the Court to impose sentence of imprisonment or fine or both.

10. Observations made in suo-moto Civil Writ Petition No. 2 of 2020 do not inhibit inherent power of High Court conferred under Section 482 Cr.P.C.

11. In present case, petitioner is 52% handicapped and has deposited in the Court 10% over and above the amount of compensation and therefore, taking into consideration these facts, I am of the considered opinion that complainant has been compensated adequately and therefore, substantive sentence of imprisonment imposed upon him is not necessary.

12. Accordingly complaint filed by the respondent is compounded and impugned judgments/orders are set-aside and petitioner is acquitted of the offence charged.

13. Trial Court is directed to release the amount of Rs.15,000/- deposited by the petitioner in the Trial Court alongwith interest, if any, accrued thereon, to the respondent-complainant Pushpa Devi by remitting the same in her Bank Account without issuing notice to petitioner-accused-Rajinder Kumar, on production of downloaded copy of this order alongwith details of Bank account.

14. Registry of this Court is also directed to release the amount deposited by the petitioner to the respondent-complainant,

alongwith up-to-date interest, by remitting the same in bank account of respondent-complainant on supply of detail of Bank account.

15. Accordingly, the present petition is disposed of in the aforesaid terms. Pending miscellaneous application(s), if any, also stand disposed of.

16. Parties are permitted to use downloaded copy from the High Court website for depositing the compounding fee with the H.P. Legal Services Authority, Shimla and for other purposes also. Concerned authority shall not insist for certified copy. Passing of order may be verified from High Court website.

15th December, 2022
(subhash)

**(Vivek Singh Thakur),
Judge.**

High Court