



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 22ND DAY OF AUGUST, 2022

BEFORE

HON'BLE MR. JUSTICE SANDEEP SHARMA

CR. REVISION NO. 334 OF 2022

Between:-

SHRI KANTU RAM

(BY MR. I.S. CHANDEL, ADVOCATE)

AND

SHRI BEER SINGH

.. PETITIONER

(BY MS. ARUNA CHAUHAN, ADVOCATE)

RESPONDENT

Whether approved for reporting: _____

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

ORDER

Instant petition filed under Ss. 397 /401 CrPC, lays challenge to judgment dated 29.3.2022 passed by learned Additional Sessions Judge (II) Shimla in Cr. Appeal No. 4-T/10 of 2021 affirming judgment of conviction and order of sentence dated 11.11.2011 passed by learned Additional Chief Judicial Magistrate Theog in case No. 430/3 of 2016 titled Beer Singh v. Kantu Ram, whereby learned trial Court, while

holding the petitioner-accused (hereinafter, 'accused') guilty of having committed offence punishable under S. 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo simple imprisonment for a period of one year and pay compensation of Rs.3,20,000 to the respondent/complainant (hereinafter, 'complainant').

2. Precisely, the facts of the case, as emerge from the record, are that the complainant instituted a complaint under S. 138 of the Act in the competent court of law alleging therein that the accused borrowed Rs. 3.00 Lakh from him for sale and purchase of apple. He alleged that with a view to discharge his liability, accused issued cheque bearing No.199387 dated 16.9.2016 amounting to Rs. 3.00 Lakh drawn at State Bank of India Theog, but the fact remains that said cheque, on its presentation, was dishonoured on account of insufficient funds in the account of the accused. Since despite having received legal notice, accused failed to make good the payment within the stipulated time, complainant was compelled to institute proceedings under S. 138 of the Act in the competent Court of law. Learned trial Court on the basis of evidence adduced on record by respective parties, held the accused guilty of having committed offence punishable under S. 138 of Act and convicted and sentenced him as per description given herein above.

3. Being aggrieved and dissatisfied with judgment of conviction and order of sentence passed by learned trial Court, accused preferred an appeal in the court of learned Additional Sessions Judge (II), Shimla, which came to be dismissed vide judgment dated 29.3.2022. In the aforesaid background, accused has approached this court in the instant

proceedings, praying therein for his acquittal after setting judgments of conviction and order of sentence passed by both the learned Courts below.

4. Vide order dated 1.7.2022, this court suspended the substantive sentence imposed upon the accused by learned trial Court, subject to depositing 50% of compensation amount within four weeks and furnishing personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of learned trial Court, however, the fact remains that the aforesaid order never came to be complied with.

5. On 26.7.2022, learned counsel for the petitioner apprised this court that a sum of Rs.1,34,000/- stands paid to the complainant whereas, remaining amount of Rs. 1,66,000 shall be paid by the accused on or before next date of hearing.

6. Today, during proceedings of the case, learned counsel for the petitioner, on the instructions of accused, who is present in court, states that as of today, Rs. 2,34,000/- stands paid to the complainant, whereas Rs. 66,000/- lying deposited in the court of learned Additional Chief Judicial Magistrate, Theog can be ordered to be released in favour of the complainant. He states that since the amount awarded by learned trial Court has been agreed to be paid to the complainant, this court, while exercising power under S.147 of the Act may compound the offence and acquit the accused of the charges framed against him under S. 138 of the Act.

7. Learned counsel for the respondent, while fairly admitting the factum with regard to receipt of Rs.2,34,000/- from accused states on

instructions of the complainant, who is also present in the court, that in case, sum of Rs. 66,000 lying deposited with learned Additional Chief Judicial Magistrate Theog is ordered to be released in favour of the complainant, prayer made on behalf of accused for compounding of offence can be accepted.

8. Having taken note of the fact that the entire amount of compensation awarded by learned trial Court has been agreed to be paid to the complainant, this court sees no impediment in accepting the prayer made on behalf of the accused in the petition for compounding of offence under S. 147 of the Act, and in terms of guidelines laid down by Hon'ble Apex Court in **Damodar S. Prabhu V. Sayed Babalal H.** (2010) 5 SCC 663, wherein Hon'ble Apex Court 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.

9. Consequently, in view of above, prayer made on behalf of the accused is allowed and offence committed by him under S.138 of the Act is ordered to be compounded. Judgments of conviction and order of sentence passed by learned courts below are quashed and set aside. Accused is acquitted of the offence under S.138 of the Act.

10. Learned Additional Chief Judicial Magistrate Theog is directed to release the amount of Rs. 66,000/- in favour of the complainant by remitting the same in his savings bank account, details whereof shall be furnished by learned counsel for the respondent within a period of one week.

11. Since the complainant was unnecessarily dragged into litigation for realisation of his own money, Rs. 10,000/- is awarded in favour of the complainant to be paid by the accused within six weeks from today. It is clarified that in case this amount is not paid within the stipulated period, accused besides rendering himself liable for penal consequences, would also invite proceedings under Contempt of Courts Act. Liberty is reserved to the complainant to get this petition revived, in the event of non-payment of litigation cost, as awarded by this court, so that appropriate action in accordance with law is taken against the accused.

12. Petition stands disposed of in the afore terms, alongwith all pending applications. Bail bonds, if any, furnished by the accused are discharged.

August 22, 2022
(Vikrant)

(Sandeep Sharma)
Judge

High Court