THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 23 of 2020
Decided on: 22.12.2020

Sanjay Kumar .....Petitioner

Versus

Neel Chand .....Respondent

Coram

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

Whether approved for reporting?[1]

For the petitioner: **Mr. Maan Singh, Advocate through video conferencing.**

For the respondent: **Mr. Rajesh Kumar, Advocate through video conferencing.**

Vivek Singh Thakur, J (Oral)

Present revision petition has been filed assailing judgment dated 19.12.2019 passed by learned Additional Sessions Judge, Kullu, District Kullu H.P., in Cr. Appeal No. 12 of 2019, whereby judgment/order dated 30.07.2019, passed by learned Judicial Magistrate 1st Class, Manali, District Kullu, H.P. in case No.351 of 2016 convicting and sentencing the petitioner/accused to undergo simple imprisonment for a period of three months and to pay compensation of ₹80,000/- to the complainant has been affirmed.

2. A joint application i.e., Cr.M.P No. 1723 of 2020 has been filed for compounding the case. Application is duly supported by the affidavits of both the parties and original compromise dated 15th December, 2020 has also been placed on record, whereby it is stated that the matter has been compromised between the parties and petitioner-accused has made the full and final payment to the

[1]Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

complainant except ₹40,000/- deposited by the complainant in the trial Court.

3. Mr. Rajesh Kumar, learned counsel appearing for respondent-complainant, vide separate statement, has reiterated the amicable settlement arrived at between the parties. He submits that he has instructions to say that except the amount lying deposited in the trial Court i.e. ₹40,000/-, the petitioner has made payment of remaining amount to the respondent-complainant and matter has been amicably settled between the parties and in terms of compromise, the amount lying deposited with the trial Court i.e. ₹40,000/- is also to be released to the respondent-complainant and in turn, respondent-complainant has agreed to withdraw the complaint for compounding the case and, therefore, he has instructions to endorse the compromise and to pray for compounding, after permitting the respondent-complainant to withdraw the complaint. He further submits that his deposition is strictly in consonance and in compliance of the instructions imparted to him by respondent -complainant.

4. Mr. Maan Singh, learned counsel for petitioner-accused, in his statement recorded separately has endorsed the compromise as well as statement of Mr. Rajesh Kumar, learned counsel for respondent-complainant to be true and correct. He has communicated no objection for release of ₹40,000/- in favour of respondent-complainant which has been deposited by petitioner-accused in the trial Court.

5. In view of aforesaid statement made by learned counsel for respondent-complainant, respondent/complainant is permitted to

withdraw the complaint and matter is compounded and complaint arising out of dishonour of cheque under Section 138 of Negotiable Instrument Act is treated to be withdrawn and judgments of conviction and sentence passed by learned Courts below are quashed and set aside. Petitioner/accused is acquitted of the accusation framed against him.

6. Mr. Maan Singh, learned counsel appearing for the accused-petitioner has also submitted that financial condition of the petitioner is very weak and he has some how manged to pay the remaining amount of compensation to respondent-complainant. Therefore, he deserves to be exempted from the payment of compounding fee particularly in view of judgments passed by the Supreme Court in ***Damodar S.Prabhu vs. Sayed Babalal H. (2010)5 SCC 663*** and in ***Madhya Pradesh Legal Services Authority vs. Prateek Jain and another (2014)10 SCC 690.***

7. Considering the entire facts and circumstances, I do not find the present a fit case for exempting the compounding fee as a whole, however, in the ends of justice, the petitioner is directed to deposit Rs.2,000/- as compounding fee to the H.P. State Legal Services Authority on or before 15.01.2021.

8. After depositing compounding fee/cost, petitioner shall place copy of receipt of deposit on record of this petition. In case of default in depositing compounding fee/cost with H.P. State Legal Services Authority, Shimla within stipulated period, the judgments of conviction and sentence shall automatically revive.

9. Trial Court is also directed to release the amount of ₹40,000/-, deposited by petitioner-accused in case No. 127 of 2016

titled as Neel Chand Vs. Sanjay Kumar vide Receipt No. 0290341 dated 26.11.2019, along with up-to-date interest if any accrued thereupon, in favour of respondent/complainant Neel Chand on submission/production of account number before the trial Court along-with copy of this order. It is made clear that for release of said amount, no fresh notice is required to be issued to accused-petitioner Sanjay Kumar.

10. Petition stands disposed of, in the aforesaid terms, so also the pending application(s), if any. Copy of this judgment be also sent to H.P. State Lagal Services Authority, Shimla.

December 22, 2020
(naveen)

(Vivek Singh Thakur)
Judge