IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 321 of 2024
Date of Decision: 02.08.2024

Mithun Chauhan .....**Petitioner**

Versus

Nissar Hussain .....**Respondent**

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?

For the petitioner: Mr. Sanjeev Bhushan, Senior Advocate with Mr. Rajesh Kumar, Advocate.

For the Respondent: Mr. Ganesh Barowalia, Advocate, for respondent.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition filed under Section 397 read with Section 401 of Criminal Procedure Code, lays challenge to judgment dated 29.02.2024 passed by the learned Additional Sessions Judge, Rohru, H.P., in Criminal Appeal No. 140-R/10 of 2023, affirming the judgment of conviction and order of sentence dated 27.09.2023 passed by the learned Additional Chief Judicial Magistrate, Court No.1, Rohru, District Shimla, H.P., in criminal complaint No. 39-3 of 2021, whereby learned Court below, while holding the petitioner-accused guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act ***(for short 'Act')*** convicted and sentenced him to undergo simple imprisonment for a period of ten months and pay compensation to the tune of Rs. 4,15,000/- to the respondent-complainant.

2. Precisely, the facts of the case as emerge from the record are that respondent-complainant ***(for short 'complainant')*** filed a complaint under Section 138 of the Act in the competent court of law, alleging therein

that petitioner-accused with a view to discharge his liability issued cheques i.e. cheque bearing No. 298522 dated 16.10.2020 amounting to Rs. 1,50,000/- and cheque No. 298523 dated 17.10.2020 amounting to Rs. 2,00,000/-, respectively, in favour of the complainant, but fact remains that aforesaid cheques on their presentation, were dishonoured on account of insufficient funds in the bank account of the petitioner-accused. Since petitioner-accused failed to make the payment good within the time stipulated in the legal notice, complainant was compelled to initiate proceedings before the competent Court of law under Section 138 of the Act.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment dated 27.09.2023, held the petitioner-accused guilty of having committed offence 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 recorded by the learned Court below, petitioner-accused preferred an appeal in the court of learned Additional Sessions Judge, Rohru, HP, which came to be dismissed vide judgment dated 29.02.2024**,** as a consequence of which, judgment of conviction recorded by the learned trial Court came to be upheld. In the aforesaid background, present petitioner-accused has approached this Court by way of instant proceedings, seeking therein his acquittal after setting aside the judgments of conviction recorded by the courts below.

5. Before case at hand could be heard and decided on its own merit, parties have entered into compromise, whereby they have resolved to settle the dispute amicably *inter se* them. Today during proceedings of the case, Mr. Sanjeev Bhushan, learned Senior Counsel for the petitioner-accused duly assisted by Mr. Rajesh Kumar, Advocate, states that sum of Rs. 3,25,000/- and Rs. 90,000/- lying deposited with Registry of this Court as well as learned trial Court and he has no objection in case aforesaid amount is ordered to be released in favour of complainant and thereafter, this court while exercising power under Section 147 of the Act may proceed to compound the offence and acquit the accused from the charges framed against him.

6. While fairly admitting factum of compromise arrived *inter se* parties, Mr. Ganesh Barowalia, learned counsel for the complainant, states that, in case amount lying deposited with the Registry of this court as well as learned trial Court is ordered to be released in favour of complainant, he shall have no objection in compounding the offence and acquitting of the accused from the charges framed against him under Section 138 of the Act.

7. Since parties have entered into compromise, whereby the petitioner-accused has already agreed to pay the entire amount of compensation, coupled with the fact that complainant is not averse to prayer made on behalf of petitioner for compounding the offence, there appears to no impediment for this court to compound the offence alleged to have been committed by the petitioner, while exercising power under Section 147 of the Act as well as in terms of guidelines issued by the Hon'ble Apex Cou*rt i****n Damodar S. Prabhu V. Sayed Babalal H. (2010) 5***

SCC 663, wherein it has been 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.

8. Consequently, in view of the discussion made hereinabove as well as law taken into consideration, present matter is ordered to be compounded and impugned judgments of conviction and order of sentence dated 27.09.2023 and 29.02.2024, passed by the learned Courts below are quashed and set-aside and the petitioner-accused is acquitted of the charge framed against him under Section 138 of the Act. Interim order, if any, is vacated. Bail bonds, if any, discharged. The petition is disposed of alongwith pending applications, if any.

12. Entire compensation amount deposited by the petitioner-accused with the learned trial Court as well as Registry of this Court is ordered to be released in favour of complainant by remitting the same in his bank account, detail whereof, shall be furnished within a period of one week.

13. Since complainant was compelled to engage in unwarranted litigation with the petitioner-accused for realization of his own amount, petitioner-accused is directed to deposit 2% of the cheque amount with the HP State Legal Service Authority as compounding fee within a period of four weeks, failing which, he shall render himself liable for penal consequences as well as contempt of court.

(Sandeep Sharma)
Judge

August 02, 2024
(sunil)