IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.587 of 2022
Date of Decision: 20.08.2024

Ram Singh .....**Petitioner**

Versus

Dhani Ram (since deceased) through LRs and Others

.....**Respondent**

Coram

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

For the Petitioner: Mr. Sumeet Raj Sharma, Advocate.

For the Respondents: Mr. Loveneesh Verma, Advocate, for respondents No.1 to 3.

Mr. Rajan Kahol, Mr. Vishal Panwar, Mr. B.C. Verma, Additional Advocates General, with Mr. Ravi Chauhan, Deputy Advocate General, for respondent/State.

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition filed under Section 397 Cr.P.C., lays challenge to judgment dated 19.09.2022, passed by the learned Sessions Judge, Mandi, Himachal Pradesh, in Criminal Appeal No.24 of 2022, titled *Ram Singh Vs. Dhani Ram through LRs and Others*, affirming judgment of conviction and order of sentence dated 21.04.2022/22.04.2022, passed by the learned Judicial Magistrate First Class, Court No.2, Mandi, Himachal Pradesh, whereby the learned trial Court while holding the petitioner-accused (hereinafter, '*accused*') guilty of having committed offence punishable under Section 138 of the Negotiable

Instruments Act (in short the “Act"), convicted and sentenced him to undergo simple imprisonment for a period of two months and pay compensation to the tune of Rs.1,20,000/- to the complainant.

2. Precisely, the facts of the case, as emerge from the record are that respondent-complainant (hereinafter, ‘*complainant*’) instituted a complaint under Section 138 of the Act, in the Court of learned Judicial Magistrate First Class, Court No.2, Mandi, Himachal Pradesh, alleging therein that accused with a view to discharge his liability issued Cheque for a sum of Rs.90,000/-, but fact remains that aforesaid Cheque on its presentation, was dishonoured. Since petitioner-accused failed to make the payment good within the time stipulated in the legal notice, respondent/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/order dated 21.04.2022/22.04.2022, 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 Court below, accused preferred an appeal in the Court of learned Sessions Judge, Mandi, Himachal Pradesh, which also

came to be dismissed vide judgment dated 19.09.2022, 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 merits, parties have entered into compromise, whereby petitioner/accused has agreed to pay entire amount of compensation to the respondent/complainant.

6. Counsel representing the petitioner, on instructions, states that entire amount of compensation amounting to Rs.1,20,000/-, awarded by learned trial Court is lying deposited with the Registry of this Court and the same has been agreed to be released in favour of respondent/complainant. He states that since petitioner/accused has agreed to pay entire amount of compensation awarded by learned trial Court, this Court, while exercising power under Section 147 of the Act may proceed to compound the offence.

7. Mr. Loveneesh Verma, learned counsel representing the respondent/complainant, on instructions, fairly acknowledges factum of compromise arrived *inter se* parties. He states that entire amount of

compensation awarded by learned trial Court is lying deposited with the Registry of this Court and the same has been agreed to be released in favour of respondent/complainant. He states that in case aforesaid amount is ordered to be released in favour of respondent/complainant, he shall have no objection in compounding the offence.

8. Since parties have resolved to settle their dispute amicably *inter se* them, as has been taken note hereinabove, coupled with the fact that respondent/complainant has no objection in compounding the offence, in the event of his being released the amount lying deposited with the Registry of this Court, this Court sees no impediment in accepting the prayer made on behalf of the petitioner for compounding of offence, while exercising power under Section 147 of the Act as well as in terms of guidelines issued by the Hon'ble Apex Court *in* ***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.

9. Consequently, in view of the above, present matter is ordered to be compounded and impugned judgments of conviction and sentence dated 19.09.2022 and 21.04.2022/22.04.2022, passed by the learned Appellate Court and learned trial Court 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, are discharged. Amount of Rs.1,20,000/-lying deposited with the Registry of this Court, is ordered to be released in favour of the respondent-complainant by remitting the same in his saving bank account, detail whereof shall be furnished by his counsel within one week.

10. Since respondent/complainant was compelled to engage in unwarranted litigation with the petitioner/accused for realization of his own money, petitioner-accused is directed to pay a sum of Rs.10,000/- as litigation charges in favour of respondent/complainant and further to deposit 2% of the Cheque amount with the H.P. State Legal Service Authority as compounding fee, within a period of four weeks, failing which, petitioner/accused shall render himself for penal consequences as well as Contempt of Court.

(Sandeep Sharma),
Judge

August 20, 2024
(Rajeev Raturi)