IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP No.4904 of 2026 in
Cr.R. No. 44 of 2026
Date of Decision: 02.11.2026

Ravi Dutt

.....Applicant/Petitioner

Versus

Sunil Kumar

.....Non-applicant/Respondent

Coram

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

For the Petitioner: Mr. Naresh Kumar Tomar, Advocate.

For the Respondent: Mr. Kunal Thakur, Advocate.

Sandeep Sharma, J. *(Oral)*

By way of instant application filed under Section 147 of the Negotiable Instruments Act *(for short 'Act')* read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for *short 'the BNSS*") read with prayer has been made by the applicant-accused for compounding of offence alleged to have been committed by him under Section 138 of the Act.

2. Precisely, the facts of the case, as emerge from the pleadings as well as other documents adduced on record by the respective parties, are that non-applicant-respondent/complainant lodged complaint under Section 138 of the Act, before the competent court of law, alleging therein that he approached the accused, who was interested in selling his land, for purchase of land at Rajgarh, and entered into an agreement to sell of the land comprising khasra No. 874/791, plot 1, total measuring 01.18 bighas to the extent of 00.02 bighas of the land situate at revenue village Fetahpur Sidhori, Tehsil Rajgarh, District Sirmaur, Himachal Pradesh on 6.9.2014 at

Rajgarh. Since accused failed to comply with terms of the sale agreement, complainant issued legal notice through his counsel on 3.7.2018 calling upon him to get the sale deed executed in favour of the non-applicant-respondent/complainant. Though after receipt of legal notice, applicant/accused agreed to return the money and issued a cheque bearing No.318683 dated 6.8.2018, amounting to Rs. 85,000/-, in favour of the non-applicant-respondent/complainant, however same on its presentation to the bank concerned was dishonoured with remarks "funds insufficient". Immediately, after receipt of aforesaid memo, complainant served legal notice upon the applicant/accused, thereby calling upon him to make the payment good within stipulated time, but in vain, as such, complainant had no option, but to initiate proceedings under Section 138 of the Act in the competent court of law. However, since applicant-accused failed to make the payment good within the time stipulated in the legal notice, non-applicant-complainant was compelled to initiate proceedings under Section 138 of the Act in the Court of learned Judicial Magistrate First Class, Rajgarh, District Sirmaur, Himachal Pradesh, which subsequently, on the basis of evidence adduced on record by the respective parties, held the applicant/accused guilty of his having committed offence punishable under Section 138 of the Act and accordingly, convicted and sentenced him as per description given herein above.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 30.04.2022, held the applicant/accused guilty of having committed offence punishable under Section 138 of the Act and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of six months and pay

compensation to the tune of Rs.1,00,000/- to the non-applicant-complainant. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the court below, applicant/accused preferred an appeal before the learned first appellate Court, but same was dismissed vide judgment 11.08.2025.

4. Being aggrieved and dissatisfied with the aforesaid judgment passed by learned first appellate court, applicant-accused preferred Criminal Revision No.44 of 2026 in this Court, which also came to be dismissed vide judgment dated 21.05.2026.

5. Since after passing of aforesaid judgment dated 21.05.2026, applicant-accused has compromised the matter with the non-applicant/respondent-complainant, whereby applicant-accused has paid the entire amount of compensation to the respondent-complainant, applicant-accused has approached this Court in the instant application, praying therein for compounding of the offence under Section 147 of the Act read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita.

6. Mr. Kunal Thakur, Advocate, while putting in appearance on behalf of the respondent/complainant, states that he has instructions to depose on behalf of the respondent/complainant. He states that respondent/complainant has compromised the matter with the applicant-accused and as per compromise, entire amount has already been received by the respondent/complainant, respondent/complainant shall have no objection in compounding the offence, but some amount qua litigation charges may be awarded in favour of respondent/complainant because it was unnecessarily dragged into litigation for realization of his own money. His statement is taken on record.

7. While considering the prayer made in the application, the question which needs to be decided at first instance is that "*whether after upholding the judgment of conviction and order of sentence passed by learned court below, this Court proceed to compound the offence or not?.*"

8. This Court vide judgment passed in Cr.MP No. 1197 of 2017 in Cr. Revision No. 394 of 2015 titled **Gulab Singh** v. **Vidya Sagar Sharma**, while relying upon judgment of Hon'ble Apex Court as well as other Constitutional Courts has already held that court, while exercising power under Section 147 of Act can proceed to compound offence even in those cases, where accused stands convicted. Relevant portion of the order passed by this court in order supra is reproduced as under:

> "8. Before acceding to aforesaid joint request having been made by learned counsel for the respective parties, moot question arise for determination of this Court is whether it has power to review/recall its own order/judgment passed in Criminal Revision No.394 of 2015, wherein judgment of conviction recorded by both the Courts below came to be upheld.
> 9. Mr. Manohar Lal Sharma, learned counsel representing the petitioner, has invited attention of this Court to the judgment passed by Hon'ble High Court of Rajasthan in Naresh Kumar Sharma versus State of Rajasthan & another, Criminal Misc. Application No.371 of 2016 in Criminal Revision Petition No.1267 of 2016, to suggests that in view of amicable settlement arrived inter se the parties, this Court has power to recall its judgment in the light of the provisions contained in Section 147 of the Act, which permits compounding of the offence under Section 138 of the Act. At this stage, it would be profitable to reproduce the judgment passed by Hon'ble High Court of Rajasthan hereinbelow:-
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> "The accused-petitioner has field this criminal misc. application under section 482 Cr.P.C read with section 147 of Negotiable Instruments Act(for short the 'Act') with a prayer to review/recall the order dated 6.10.2016 passed by this Court in SB Criminal Revision Petition No.1267/2016 in the light of compromise dated 4.11.2016 subsequently entered between the parties and as a consequences thereof to acquit the accused petitioner for the offence under Section 138 of N.I. Act.
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> Vide order dated 6.10.2016, the aforesaid revision petition filed by the petitioner was dismissed by this Court while upholding and affirming the judgment and order of conviction and sentence passed by the trial Court as well as by the Appellate Court. It was jointly submitted by the learned counsel for the parties that after the order dated 6.10.2016 the parties have amicably settled their dispute and entered into compromise and the amount in the dispute has been paid by the petitioner to the respondent-complainant.
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> It was further submitted that although the revision petition has been dismissed by this Court on merits vide order dated 6.10.2016, but even

> then that order can be recalled in the light of provisions of Section 147 of N.I.Act which permits compound of the offence under Section 138 of the Act at any stage and the accused can be acquitted.
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> In support of their submissions, they relied upon the case of K. Subramanian Vs. R.Rajathi reported in (2010) 15 SCC 352 and order dated 7.7.2015 passed by a Single Bench of Hon'ble Gujarat High Court in S.B. Criminal Misc. Application (Recall) No.10232/2015 filed in Special Criminal Application No.3026/2014.
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> On consideration of submissions jointly made on behalf of the respective parties and the material including the compromise entered into between the parties and the fact that the amount in dispute has been paid by the accused-petitioner to the respondent- complainant and the principles of law laid down in the aforesaid decisions, I find it a fit case in the criminal misc. application is to be allowed and the order dated 6.10.2016 is to be recalled.
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> Consequently, the criminal misc. application is allowed and the order dated 6.10.2016 is recalled and all the orders whereby the accused-petitioner was convicted and sentenced for the offence under Section 138 of N.I. Act are set aside and as a consequence thereof he is acquitted therefrom."

9. Reliance is also placed upon the judgment passed by Hon'ble Gujarat High Court, wherein similar application came to be filed for recalling the judgment passed by the Hon'ble High Court of Gujarat. In the aforesaid judgment, Hon'ble Gujarat High Court, has reiterated that judgment passed by the High Court affirming the judgment of conviction recorded under Section 138 of the Act, can be recalled in view of the specific provisions contained in Section 147 of the Act, which provides for compounding of offence allegedly committed under Section 138 of the Act.

10. The Hon'ble Apex Court in **K. Subramanian Vs. R.Rajathi; (2010)15 Supreme Court Cases 352**, also in similar situation ordered for compounding of offence after recording of conviction by the courts below, wherein it has been held as under:-

> "6. Thereafter a compromise was entered into and the petitioner claims that he has paid Rs. 4,52,289 to the respondent. In support of this claim, the petitioner has produced an affidavit sworn by him on 1.12.2008. The petitioner has also produced an affidavit sworn by P. Kaliappan, Power of attorney holder of R. Rajathi on 1.12.2008 mentioning that he has received a sum of Rs. 4,52,289 due under the dishonoured cheques in full discharge of the value of cheques and he is not willing to prosecute the petitioner.

> 7. The learned counsel for the petitioner states at the Bar that the petitioner was arrested on 30.7.2008 and has undergone the sentence imposed on him by the trial Court and confirmed by the Sessions Court, the High Court as well as by this Court. The two affidavits sought to be produced by the petitioner as additional documents would indicate that indeed a compromise has taken place between the petitioner and the respondent and the respondent has accepted the compromise offered by the petitioner pursuant to which he has received a sum of Rs.4,52,289. In the affidavit filed by the respondent a prayer is made to permit the petitioner to compound the offence and close the proceedings.
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> 8. Having regard to the salutary provisions of Section 147 of the Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code."

11. The Hon'ble Apex Court in the aforesaid judgment has categorically held that in view of the provisions contained under Section 147 of the Act, read with Section 320 of Cr.P.C, compromise arrived inter se the parties, can be accepted and offence committed under Section 138 of the Act, can be ordered to be compounded. Hon'ble Apex Court in ***Damodar S. Prabhu V. Sayed Babalal H. (2010) 5 SCC 663,*** has categorically held that offence punishable under Section 138 of the Negotiable Instruments Act can be compounded after recording of conviction, hence this court while exercising power under Section 147 of the Act read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, can proceed to compound the offence alleged to have been committed by the petitioner and set-aside judgment of conviction recorded by the courts below.

12. Consequently, in view of the detailed discussion made hereinabove as well as law laid down by the Hon'ble Apex Court, this Court holds that present application for compounding of offence after dismissal of criminal revision petition vide judgment dated 21.05.2026, is maintainable and as such, parties are permitted to get the matter compounded in the light of the compromise arrived *inter se* them. Accordingly, judgment(s) of

conviction and sentence recorded by the learned courts below are quashed and set-aside and applicant-petitioner is acquitted of the charge framed against him. Since non-applicant/complainant was compelled to engage in unwarranted litigation with the applicant/accused for realization of his own amount, applicant/accused is directed to deposit Rs.5,000/- with the HP State Legal Service Authority as compounding fee and Rs.5,000/- as litigation charges payable to the complainant within a period of six weeks from today, failing which, he shall render himself liable for penal consequences as well as contempt of court. Application stands disposed of.

(Sandeep Sharma),
Judge

November 02, 2026
(sunil)