
(2017) 04 SHI CK 0077
In the High Court Of Himachal Pradesh
Case No : 84 of 2017

Bhoop Ram

APPELLANT

Vs

Rakesh Ahuja and another

RESPONDENT

Date of Decision : 18-04-2017

Acts Referred:

[Negotiable Instruments Act, 1881](#), [Section 138](#) - Dishonour of cheque for insufficiency, etc., of funds in the account

Citation : (2017) 04 SHI CK 0077

Hon'ble Judges : Vivek Singh Thakur

Bench : Single Bench

Advocate : Peeyush Verma, Ranvir Chauhan

Judgement

1. Present revision petition has been filed assailing judgment passed by learned Additional Sessions Judge (I), Shimla, District Shimla H.P. in Cr. Appeal No. 49-S/10 of 2013, dated 1.8.2016, affirming judgment and order of conviction passed by learned Judicial Magistrate 1st Class, Court No.III, Shimla H.P., dated 30.10.2012 and 3.6.2013 in complaint No. RBT No. 2908-3 of 2010/07, convicting and sentencing the petitioner/accused to undergo simple imprisonment for the period of six months and to pay compensation of Rs.1,40,000/- to the complainant.

2. Petitioner and respondent No.1 are present in Court, who are duly identified by their respective counsel. They have stated that matter has been compromised and as per compromise, Rs.3,25,000/-, in total, is to be paid by petitioner or on his behalf to respondent No.1/complainant and therefore, amount of Rs.1,40,000/-, deposited in Registry of this Court by petitioner, is to be released in favour of respondent No.1/complainant and for payment of remaining amount of Rs.1,85,000/-, petitioner has handed over a cheque to respondent No. 1 bearing No. 911894, dated 18.4.2017, drawn on State Bank of India, Sarahan, (Bushar), Tehsil Rampur Bushehr, District Shimla, issued by his real brother Mr.Durga Singh, son of late Shri Shiv Saran Singh and in turn, respondent No.1/

complainant has prayed for permission to withdraw the complaint for compounding the matter as compromised. Separate statements of both of them have been recorded.

3. Consequently, 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and complaint arising out of dishonour of cheque under Section 138 of Negotiable Instrument Act is permitted to be withdrawn and judgments of conviction and sentence passed by learned Courts below are quashed and set aside.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.

4. Registry is directed to release Rs. 1,40,000/- in favour of respondent No.1 along with upto date interest, if any, by remitting the same in his account No. 03468440000836/IFSC HDFC0000346 of HDFC Bank, Sanjauli.

5. Learned counsel for the petitioner submits that only source of income of petitioner is agriculture and amount, in dispute, was in connection with transactions between respondent No.1/complainant and a Society namely M/s Shrikhand Society, but for amicable settlement, petitioner somehow managed the amount for making payment through his brother, to respondent No.1/complainant and it would be in the interest of justice to exempt the petitioner from paying the compounding fee. He has relied upon the decisions rendered by Hon"ble Apex Court in Madhya Pradesh Legal Services Authority vs. Prateek Jain and another (2014)10 SCC 690 wherein after considering Damodar S.Prabhu vs. Sayed Babalal H. (2010)5 SCC 663 it has been held that Court may reduce compounding fee for given facts and circumstances of a particular case.

6. Keeping in view the over all facts and circumstances of the case, petitioner is directed to deposit 5% instead of 15% of total cheque amount which comes to Rs.5000/- with H.P. State Legal Services Authority, Shimla on or before 1.5.2017.

7. 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 on or before 1.5.2017 the judgments of conviction and sentence shall automatically revive.

8. 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 Legal Services Authority, Shimla.