

**(2019) 07 SHI CK 0060**  
**In the High Court Of Himachal Pradesh**  
**Case No : Criminal MMO No. 223 Of 2019**

Gian Chand

APPELLANT

Vs

Harish Kumar

RESPONDENT

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**Date of Decision :** 01-07-2019

**Acts Referred:**

Negotiable Instruments Act, 1881 — Section 138

**Citation :** (2019) 07 SHI CK 0060

**Hon'ble Judges :** Chander Bhusan Barowalia, J

**Bench :** Single Bench

**Advocate :** G. R. Palsra, Bodh Raj Thakur

**Final Decision :** Allowed

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## Judgement

Chander Bhusan Barowalia, J

1. The present petition has been filed against the judgment passed by the learned Sessions Judge, Mandi, District Mandi, dated 1.9.2016, in Cr. Appeal

No. 12 of 2016, whereby the appeal filed by the petitioner against the judgment of conviction and sentence passed by the learned Additional Chief

Judicial Magistrate, Court No.1, Mandi, District Mandi, dated 18.2.2016, in Case No. 14 of 2012, under Section 138 of the Negotiable Instruments Act,

vide which, petitioner-accused was convicted and sentenced to undergo simple imprisonment for a period of six months and to pay compensation to

the tune of Rs.50,000/- (rupees fifty thousand only) to the complainant, has been dismissed and the judgment and sentence passed by the learned

Additional Chief Judicial Magistrate, Court No.1, Mandi, District Mandi, dated 18.2.2016, has been upheld.

2. Briefly stating facts giving rise to the present petition are that in the 1st week of August, 2012, the petitioner-accused borrowed Rs.50,000/-from the

complainant to discharge his liability towards the complainant, the accused gave a post dated cheque bearing No.697837, dated 1.9.2012, amounting to

Rs.50,000/- of Indian Bank, Mandi, to be encashed out of his bank Account No.916443761. On 25.9.2012, the respondent-complainant presented the

said cheque to the banker of the accused, but the same was dishonoured for â?? Insufficient Fundsâ? in the account of accused and was returned

back to the complainant. Thereafter, the complainant issued a legal notice, dated 9.10.2012 to the accused through registered post through his counsel,

but the accused neither responded to the said notice nor paid the cheque amount to the complainant. While giving the cheque in question to the

complainant, the accused was fully aware and in the knowledge that he was not having sufficient funds in his bank account for encashment of the said

cheque nor he had made any arrangement for encashment of the cheque and thereby the accused defrauded, deceived and cheated the complainant.

Consequently, the complainant filed a complaint against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. Learned counsel appearing for the petitioner-accused has argued that as the amount in question has been paid to the complainant and the

complainant has compromised the matter with the petitioner-accused, vide compromise deed, placed on the file, the offence be compounded and the

petitioner be acquitted of the offence, he was convicted.

4. On the other hand, learned counsel appearing for the respondent-complainant has argued that as the amount in question has been received by his

client and he has entered into a compromise with the petitioner-accused, he may be permitted to withdraw the present complaint, in view of the

compromise and the judgment/order of conviction and sentence be set aside.

5. After hearing the learned counsel for the parties and going through the records, including compromise deed, this Court finds that as the amount in

question has been received by the complainant and he does not want the accused to get convicted, it would be in the interest of justice, if the parties

are permitted to get the matter settled in light of the compromise arrived at inter se them. So, taking into consideration the overall aspects of the case,

the complainant is permitted to withdraw the complaint and the judgment/order of conviction and sentence passed by the learned Courts below are

hereby set aside and the petitioner-accused is acquitted of the offence

punishable under Section 138 of the Negotiable Instruments Act.

6. Accordingly, the petition is disposed of in the aforesaid terms, so also the pending application(s), if any.