
(2017) 04 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : 250 of 2016

Mahavir Singh

APPELLANT

Vs

Sandeep Dharma & Another

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

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

Citation : (2017) 04 SHI CK 0029

Hon'ble Judges : Vivek Singh Thakur

Bench : Single Bench

Advocate : Jeevesh Sharma, Nitin Thakur, Pankaj Negi

Judgement

1. Present revision petition has been filed assailing judgment passed by learned Sessions Judge, Shimla in Criminal Appeal No. 55-S/10 of 2013 dated 25.08.2015 affirming judgment passed by learned JMIC, Court No. (3) Shimla, H.P. Dated 30.05.2013 in Case No. 585 of 2013 convicting and sentencing petitioner-accused to undergo simple imprisonment for a period of six months and to pay compensation to the tune of Rs. 95,000/-.

2. Petitioner is present in person and has duly been identified by his counsel. He stated that the matter has been compromised with respondent No. 1 and he has made payment of Rs. 95,000/- to respondent No. 1 through his counsel Sh. Nitin Thakur, Advocate, and in pursuance to compromise, respondent No. 1 has agreed to withdraw the complaint for compounding the matter and the matter may be decided accordingly. Mr. Nitin Thakur, Advocate, appearing on behalf of respondent No. 1 stated that he was instructed by respondent No. 1 to receive the payment of amount of compensation and also to withdraw the complaint for compounding the matter as the matter has been amicably settled with petitioner and he has received amount of compensation i.e. Rs. 95000/- on behalf of respondent No. 1 and therefore he prayed for permission to the complainant to withdraw the complaint and compounding of matter.

3. Consequently, complaint arising out from dishonour of cheque under Section 138 of the Negotiable Instruments Act is permitted to be withdrawn and matter is permitted to be compounded and judgments of conviction and sentence passed by Courts below are quashed and set aside. Petitioner-accused is acquitted of accusation framed against him.

4. Counsel for petitioner submits that petitioner is a poor farmer and amount in question in present case was also to be paid to respondent No. 1 in connection with purchase of agricultural implements and inputs, but because of little return from agricultural income, petitioner could not pay the said amount. Therefore, it is a fit case not to impose cost for compounding in present case. In this context, he has relied upon judgment passed by the Apex Court reported in Madhya Pradesh State Legal Services Authority vs. Prateek Jain and another 2014(10) SCC 690, wherein referring judgment reported in Damodar S. Prabhu Versus Sayed Babalal H. 2010(5) SCC 663, Hon"ble Supreme Court has explained that amount of compounding cost can be reduced in view of facts and circumstances of a case by recording reasons.

5. In view of peculiar circumstances of the case of the petitioner and law laid down by Hon"ble Supreme Court, it would be appropriate that instead of paying compounding fee/cost amounting to 15% of cheque amount, he shall make payment of Rs. 6 000/- as compounding fee/cost with H.P. State Legal Service Authority, Shimla on or before 31.5.2017.

6. After depositing compounding fee/costs, 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 Service Authority, Shimla on or before 31.5.2017, the judgments of conviction and sentence would automatically revive.

7. Petition stands disposed of, in aforesaid terms so also the pending application, if any.

8. Copy of this judgment be sent to H.P. State Legal Services Authority, Shimla.