

(2017) 03 SHI CK 0110
In the High Court Of Himachal Pradesh
Case No : 73 of 2017

Sohan Lal

APPELLANT

Vs

Sushma Kumari

RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

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

Citation : (2017) 03 SHI CK 0110

Hon'ble Judges : Vivek Singh Thakur

Bench : Single Bench

Advocate : Avneesh Bhardwaj

Judgement

1. Present revision petition has been filed assailing judgment passed by learned Sessions Judge, Bilaspur, District Bilaspur H.P. in Cr. Appeal No. 2/10 of 2013, dated 28.10.2015, affirming judgment and order of conviction passed by learned Chief Judicial Magistrate, Bilaspur, District Bilaspur H.P., dated 23.11.2012 and 17.12.2012 in complaint No. 86/3 of 2011, convicting and sentencing the petitioner/accused to undergo rigorous imprisonment for the period of six months and to pay fine of Rs.2,20,000/- to the complainant.

2. Petitioner is in jail and serving sentence in present case since 19.2.2017. Learned counsel appearing on behalf of the petitioner states that matter has been amicably settled with the respondent/complainant and he has paid an amount of Rs.2,00,000/-, against the cheque amount of Rs.2,20,000/-, imposed as fine by learned trial Court, and in pursuance to said compromise, respondent/complainant has agreed to withdraw the complaint and compound the matter. Respondent/complainant, also present in person, has endorsed submissions made by learned counsel for the petitioner. Separate statements of respondent and learned counsel of petitioner have been recorded and placed on record.

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under Section 138 of Negotiable Instrument Act is permitted to be withdrawn and judgments of conviction and sentence passed by learned Courts below are quashed and set aside.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. Learned counsel for the petitioner submits that petitioner is in jail, since 19.2.2017 and served more than one month out of total sentence of six months and further that he is a small farmer supporting his family including his widow mother managing day-to-day needs of his family by working as a labourer and therefore, it is a fit case for exemption of 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.

5. Considering the peculiar facts and circumstances of the present case and also the fact that petitioner has served more than 1/6th sentence imposed upon him, he is directed to deposit compounding fee of Rs.2 500/- instead of 15% of total cheque amount with H.P. State Lagal Services Authority, Shimla on or before 29.4.2017.

6. 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 29.4.2017 the judgments of conviction and sentence shall automatically revive.

7. Since the petitioner is lodged in jail, the Registry is directed to prepare and send the release warrants of the petitioner, to the quarter concerned, forthwith with a direction to release the petitioner immediately, if not required in any other case.

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 Lagal Services Authority, Shimla. Dasti copy on usual terms.