



**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA
Cr. Revision No. 160 of 2023**

Decided on : 4.8.2023

Suresh Kumar

...Petitioner

Versus

Rameshwar Dass

...Respondent

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting?

**For the Petitioner : Mr. Saurav Thakur,
Advocate vice Mr. Sarthak
Mehta, Advocate.**

For the Respondent : Mr. J.N. Kanen, Advocate.

Virender Singh, Judge (oral)

Today, the case is fixed for consideration.

2. Learned counsel for the petitioner has filed an application, bearing CMP No.2789 of 2023, under Section 147 of the Negotiable Instruments Act (hereinafter referred to as 'the N.I. Act') in open Court. The same is ordered to be taken on record.

3. By way of the aforesaid application, a prayer has been made to permit the parties to compound the

offence. Learned counsel appearing for the respondent has made no objection, in case, the present application is allowed.

4. Petitioner Suresh Kumar has filed the present petition, against the judgment dated 23.4.2019, passed by the Court of learned Additional Sessions Judge, Kinnaur at Rampur Bushehar, District Shimla (hereinafter referred to as 'the Appellate Court').

5. By way of judgment dated 23.4.2019, learned Appellate Court has dismissed the Criminal appeal No. 84 of 2017, filed by the petitioner, titled as, 'Suresh Kumar versus Rameshwar Dass'. The said appeal has been preferred against the judgment of conviction dated 21.9.2017 and order of sentence dated 22.9.2017, passed by the Court of learned Additional Chief Judicial Magistrate, Rampur Bushehar, District Shimla (hereinafter referred to as 'the trial Court').

6. By way of judgment of conviction and order of sentenced, as referred to above, the learned trial Court has convicted the petitioner (hereinafter referred to as

‘the accused’) for the commission of offence, punishable under Section 138 of N.I. Act, and sentenced him to undergo simple imprisonment, for a period of six months and to pay compensation of Rs.85,000/- to the complainant.

7. During the pendency of the present revision petition, before this Court, the accused has paid the entire amount. He has deposited an amount of Rs.34,000/-, before the Appellate Court, when, he had preferred the appeal, before it. Thereafter, he has deposited a sum of Rs.40,000/- in the Registry of this Court, when he had preferred the revision petition before this Court. The remaining amount of Rs. 11,000/- has been paid, in cash, to the learned counsel for the respondent/complainant. Meaning thereby, the entire amount of compensation has been deposited/paid by the accused.

8. The factual position, which has been asserted, by the accused, has duly been accepted by learned counsel for the respondent/complainant. Learned

counsel for the respondent has also acknowledged that an amount of Rs. 11,000/- has been received by him, on behalf of the complainant. A prayer has been made by learned counsel for the respondent that the amount, so deposited, with the learned Appellate Court, as well as, the amount deposited in the Registry of this Court, may kindly be ordered to be released in favour of the respondent.

9. Considering the said fact, the CMP No. 2789 of 2023 is allowed.

10. Keeping in view the fact that the parties to the lis have compounded the offence, which is permissible under the provisions of Section 147 of the N.I. Act, the present petition is allowed by setting aside the impugned judgment of conviction and order of sentence, referred to above, passed by the learned trial Court, and accused is acquitted from the offence, punishable under Section 138 of the N.I. Act, subject to payment of 10% of the cheque amount, as compounding fee. The amount shall be deposited by

the accused with the Member Secretary, H.P. State Legal Service Authority, Shimla, within six weeks, from today, in view of the judgment of the Hon'ble Apex Court in '**Damodar S. Prabhu versus Sayed Baba Lal, 2015 (5) SCC 663.**

11. It is further clarified that in case of failure to deposit the compounding fee, within the prescribed period, the revision petition shall be deemed to have been dismissed and judgment of conviction and order of sentence, shall revive automatically, and the applicant shall surrender before the learned trial Court to serve the substantive sentence, imposed by this Court.

12. The amount of compensation, deposited with the Registry of this Court, as well as with the learned Appellate Court, is ordered to be released in favour of the complainant, by remitting the same to his saving bank account, particulars of which, shall be supplied by learned counsel for the respondent, to the Registry of this Court and to the learned Appellate Court.

13. Accordingly, the present Revision Petition is allowed in the aforesaid terms. The bail bonds furnished by the accused are ordered to be discharged. Record of learned trial Court be sent back. The pending application(s), if any, are also disposed of.

(Virender Singh)
Judge

August 4, 2023
Kalpana