



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 426 of 2023
Date of decision: 31st May, 2023.

Anoop Paul alias Anup PaulPetitioner.

Versus

Sunder Lal & AnotherRespondents.

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. Tek Chand Sharma, Advocate.

For the Respondents: Mr. Sunil Kaundal, Advocate for respondent No.1.

Mr. Pushpinder Singh Jaswal, Additional Advocate General for respondent No.2/State.

Sushil Kukreja, Judge (oral).

The instant petition under Sections 482, 362, 320 of Cr.P.C. and under Section 147 of Negotiable Instrument Act, has been filed by the petitioner for recalling the judgment dated 23.12.2022 passed in Cr.R/197/2022, titled ***Anoop Paul vs. Sunder Lal and another*** and permitting the parties to compound the offence.

2. The brief facts necessary for adjudication of present petition are that a complaint was filed against the

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

petitioner/accused under Section 138 of the Negotiable Instruments Act by respondent No.1-complainant, on the ground that the complainant was having family relations with the accused and in the year 2013, the accused approached the complainant seeking a friendly loan of Rs. 3,83,000/- as the accused was in dire need of money. The amount was given by the complainant to the accused. Thereafter, in the months of December/January, 2014, the accused again took a friendly loan of Rs. 3,17,000/- with the assurance that the same would be repaid. However, out of total amount of Rs. 7,00,000/- which was taken by the accused from the complainant as friendly loan, though he returned an amount of Rs. 1,00,000/- but despite assurances the balance was not paid. The accused used to put off the matter of payment of balance amount on one pretext or other repeatedly. In these circumstances, an affidavit came to be executed on 15.03.2014, in which the accused acknowledged the taking of friendly loan from the complainant and to discharge his liability, he issued two postdated cheques dated 30.06.2014, in favour of the complainant amounting to Rs. 2,83,000/- and Rs. 3,17,000/-, respectively. However, when the

cheques were presented by the complainant, both the cheques were dishonoured by the bank concerned, on the ground of 'Insufficient funds'. Thereafter, a statutory notice was issued by the complainant to the accused, calling upon him to make good the payment. Since accused-petitioner failed to make the payment within the time stipulated in the legal notice, the respondent was compelled to initiate proceedings before the competent Court of law under Section 138 of the Act and the accused-petitioner was convicted and sentenced under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'Act') by the Court of learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, H.P., and the appeal preferred by him before the Court of learned Additional Sessions Judge, Nalagarh, District Solan, H.P. was dismissed. Thereafter, the accused-petitioner had filed Criminal Revision No. 197 of 2022 before this Court which was dismissed vide order dated 23.12.2022.

3. By way of present petition, the petitioner had prayed that now the parties have amicably settled the matter out of the court and in this respect compromise deed

Annexure P-1 has also been reduced into writing and in view of the aforesaid compromise deed, the parties may be allowed to compound the offence as the complainant/respondent No.1 has received the entire amount which has been settled between the parties.

4. Vide order dated 01.05.2023 passed by this Court, the respondent No.1/complainant, had made a statement in the Court that he had no objection in case the prayer of petitioner is accepted, as the matter has been amicably settled between them.

5. Having taken note of the fact that entire amount of compensation stands paid to the respondent No.1 and the respondent No.1 has no objection in compounding the offence, this Court sees no impediment in accepting the prayer made on behalf of the accused-petitioner for compounding of offence while exercising power under Section 147 of the Act as well as in terms of guidelines issued by the Hon'ble Apex Court in **Damodar S. Prabhu V. Sayed Babalal H., (2010) 5 SCC 663**, wherein the Hon'ble Apex Court has held as under:-

“10. At present, we are of course concerned with Section 147 of the Act, which reads as follows:-

“147. Offences to be compoundable– Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.”

At this point, it would be apt to clarify that in view of the non-obstante clause, the compounding of offences under the Negotiable Instruments Act, 1881 is controlled by Section 147 and the scheme contemplated by Section 320 of the Code of Criminal Procedure (hereinafter “CrPC”) will not be applicable in the strict sense since the latter is meant for the specified offences under the Indian Penal Code, 1860.

11. So far as the CrPC is concerned, Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the Court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the Court, while subsection (2) of the said section specifies the offences which are compoundable with the leave of the Court.

12. Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-section (9) of Section 320 of the CrPC which states that ‘No offence shall be compounded except as provided by this Section’. A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Indian Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320(9) of the CrPC, especially keeping in mind that Section 147 carries a non obstante clause.”

6. In ***K. Subramanian Vs. R. Rajathi; (2010) 15***

Supreme Court Cases 352, it has been held by the Hon’ble

Apex Court that in view of the provisions contained in

Section 147 of the Act read with Section 320 of Cr. P.C.,

compromise arrived at can be accepted even after recording

of the judgment of conviction. The relevant portion of the

judgment is reproduced as under:-

“6. Thereafter a compromise was entered into and the petitioner claims that he has paid Rs. 4,52,289 to the respondent. In support of this claim, the petitioner has produced an affidavit sworn by him on 1.12.2008. The petitioner has also produced an affidavit sworn by P. Kaliappan, Power of attorney holder of R. Rajathi on 1.12.2008 mentioning that he has received a sum of Rs. 4,52,289 due under the

dishonoured cheques in full discharge of the value of cheques and he is not willing to prosecute the petitioner.

7. The learned counsel for the petitioner states at the Bar that the petitioner was arrested on 30.7.2008 and has undergone the sentence imposed on him by the trial Court and confirmed by the Sessions Court, the High Court as well as by this Court. The two affidavits sought to be produced by the petitioner as additional documents would indicate that indeed a compromise has taken place between the petitioner and the respondent and the respondent has accepted the compromise offered by the petitioner pursuant to which he has received a sum of Rs.4,52,289. In the affidavit filed by the respondent a prayer is made to permit the petitioner to compound the offence and close the proceedings.

8. Having regard to the salutary provisions of Section 147 of the Negotiable Instruments Act read with Section 320 of the Code of Criminal Procedure, this Court is of the opinion that in view of the compromise arrived at between the parties, the petitioner should be permitted to compound the offence committed by him under Section 138 of the Code.”

7. Since in the instant case, the petitioner-accused after being convicted under Section 138 of the Act, has paid the entire amount of compensation, prayer for compounding the offence can be accepted in terms of the aforesaid judgments passed by the Hon'ble Apex Court. Further, as per order dated 01.05.2023 passed by this Court, 5% of the cheque amount stands deposited by the accused-petitioner with the H.P. State Legal Services Authority, Shimla, as compounding fee and in this respect learned counsel for the petitioner has placed on record the photo copy of the receipt dated 27.05.2023 issued by H.P. State Legal Service Authority, Shimla.

8. Therefore, in view of the detailed discussion made hereinabove as well as law laid down by the Hon'ble Apex Court, the parties are permitted to get the matter compounded in light of the compromise arrived *inter se* them.

9. Accordingly, the present matter is ordered to be compounded and the impugned judgment of conviction and order of sentence passed by the learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, H.P., in Criminal Complaint No. 307/3 of 2015, affirmed by Additional Sessions Judge, Nalagarh, District Solan, H.P., dated 02.03.2022 in Criminal Appeal No. 57-NL-10 of 2019, and further upheld by this Court in Criminal Revision No.197 of 2022, dated 23.12.2022 are quashed and set-aside and the petitioner-accused is acquitted of the charge framed against him under Section 138 of the Act. Bail bonds, if any, stand discharged.

10. The petition stands disposed of accordingly, so also the pending application(s), if any.

**(Sushil Kukreja)
Judge**

31st May, 2023
(subhash)