

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Criminal Revision No. 28 of 2024  
Decided on: 29.11.2024**

---

Prakash Chandel		....Petitioner
	Versus	
Rajeev Chauhan		...Respondent

---

*Coram****The Hon'ble Mr. Justice Sushil Kukreja, Judge.  
Whether approved for reporting?<sup>1</sup>***

---

For the petitioner:	Mr. Ajay Singh Kashyap, Advocate.
---------------------	--------------------------------------

For the respondent:	Mr. Arsh Chauhan, Advocate.
---------------------	-----------------------------

---

**Sushil Kukreja, Judge (oral)**

The instant petition has been filed by the petitioner-accused under Section 397 read with Section 401 of Cr.P.C. against judgment dated 06.10.2023, passed by learned Additional Sessions Judge-II, Shimla, Camp at Theog, in Cr. Appeal No. 35-S/10 of 2023, whereby the judgment of conviction, dated 01.06.2023, and order of sentence, dated 17.07.2023, passed by learned Additional Chief Judicial Magistrate, Theog, District Shimla, H.P., in Criminal Case No. 78/3 of 2018, was affirmed.

2. The brief facts, giving rise to the present petition, can succinctly be summarized as under:

---

<sup>1</sup>

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

2(a). In the year 2017, the complainant (respondent herein) sold apple boxes to the petitioner-accused for a sum of Rs.4,10,990/- and the petitioner-accused, in order to liquidate his financial liability towards the complainant, issued a cheque, bearing No. 209777, dated 30.10.2017, amounting to Rs.4,10,900/- drawn at SBI, Baghi, Tehsil Kotkhai, District Shimla, H.P.. However, the aforesaid cheque, on being presented for encashment by the complainant, was dishonoured with remarks "insufficient funds". Subsequently, the complainant issued a notice, dated 06.02.2018, through registered post, to the petitioner-accused, but despite receipt of the same, he failed to make the payment of the cheque amount within the stipulated time. Resultantly, the complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act") before the learned Trial Court.

3. The learned Trial Court after conclusion of the trial convicted the accused under Section 138 of the Act and sentenced him to undergo simple imprisonment for a period of one year and to pay compensation of Rs.8,20,000/- to the complainant.

4. Being dissatisfied, the accused/petitioner/convict preferred an appeal before the learned Lower Appellate Court, which was dismissed, and the judgment, dated 01.06.2023, and order of sentence, dated 17.07.2023, passed by the learned Trial Court, was affirmed. Hence, accused/petitioner/convict-Prakash Chandel preferred the instant petition under Section 397 read with Section 401 of Cr.P.C. with a prayer that his petition be allowed and the impugned judgments and order of sentence passed by the learned Courts below be set-aside and he be acquitted.

5. During the pendency of the instant petition, a joint application (Cr.MP No. 4529 of 2024) under Section 147 of the Act has been filed by the petitioner-accused and the complainant-respondent seeking permission of this Court to compound the offence by setting-aside the judgment of conviction, dated 01.06.2023, and order of sentence, 17.07.2023, passed by learned Additional Chief Judicial Magistrate, Theog, District Shimla, H.P., in Criminal Case No. 78/3 of 2018, and affirmed vide judgment dated 06.10.2023, passed by learned Additional Sessions Judge-II, Shimla, H.P., in Criminal Appeal No. 35-S/10 of 2023.

6. Today, both the petitioner-accused and complainant-respondent are present before this Court and their statements have been recorded and separately placed on the file.

7. In his statement, the petitioner-accused has stated that he has compromised the matter with the respondent (complainant) and paid the entire amount of compensation to him, therefore, the matter may be compounded and judgment of conviction, dated 01.06.2023 and order of sentence, dated 17.07.2023, passed by learned Additional Chief Judicial Magistrate, Theog, District Shimla, H.P., and affirmed by learned Additional Sessions Judge-II, Shimla, District Shimla, H.P., vide judgment dated 06.10.2023 may be quashed and set-aside and he may be acquitted of the offence under Section 138 of the Act.

8. The complainant-respondent Shri Rajeev Chauhan stated that he has compromised the matter with the petitioner, as he has paid the entire amount of compensation to him and now nothing remains to be paid to him in terms of the judgment of both the learned Courts below. He has further stated that he does not intend to pursue his complaint under Section 138 of the Act and has no objection in case

the matter is compounded and judgment of conviction, dated 01.06.2023, and order of sentence, dated 17.07.2023, passed by learned Additional Chief Judicial Magistrate, Tehog, District Shimla, H.P., and affirmed by learned Additional Sessions Judge-II, Shimla, District Shimla, H.P., vide judgment dated 06.10.2023, is quashed and set-aside and the petitioner is acquitted for the offence punishable under Section 138 of the Act.

9. I have heard the learned counsel for the petitioner-accused, learned counsel for the respondent-complainant and have also gone through the material available on record.

10. Having taken note of the fact that the petitioner-accused and the complainant-respondent have settled the matter and the complainant has no objection in compounding the offence, therefore, this Court sees no impediment in accepting the prayer made on their behalf 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.”*

11. 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.”*

12. Since, in the instant case, the petitioner-accused after being convicted under Section 138 of the Act, has compromised the matter with the complainant, prayer for compounding the offence can be accepted in terms of the aforesaid judgments passed by the Hon'ble Apex Court.

13. Therefore, in view of the detailed discussion made hereinabove as well as law laid down by the Hon'ble Apex Court, the application is allowed and matter is ordered to be compounded.

14. Accordingly, the present matter is ordered to be compounded and the impugned judgment of conviction, dated 01.06.2023, and order of sentence, dated 17.07.2023, passed by learned Additional Chief Judicial Magistrate, Theog, District Shimla, H.P., in Criminal Case No. 78/3 of 2018, and affirmed by learned Additional Sessions Judge-II, Shimla, Camp at Theog, vide judgment dated 06.10.2023, in Criminal Appeal No. 35-S/10 of 2023, 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.



15. Undisputedly, the cheque amount was Rs.4,10,900/-, however, the learned counsel for the petitioner submitted that the petitioner is a poor person and the imposition of compounding fee may be reduced.

16. In case ***K. Subramanian vs. R. Rajathi*** (supra), the Hon'ble Apex Court had issued the guidelines with respect to the imposition of compounding fee, which read as under:-

“THE GUIDELINES

*(i) In the circumstances, it is proposed as follows:*

*(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the Court without imposing any costs on the accused.*

*(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.*

*(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.*

*(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.*

... ..

*25. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end."*

17. Therefore, taking into consideration the law laid down by the Hon'ble Apex Court (supra) and the financial condition of the petitioner, since the competent Courts can reduce the compounding fee with regard to the specific facts and circumstances of the case, the petitioner is directed to deposit token compounding fee of Rs.20,545/- (rupees twenty thousand five hundred forty five) only, i.e., 5% of the cheque amount, with the H.P. State Legal Services Authority, Shimla, H.P., within four weeks from today.

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

**29<sup>th</sup> November, 2024**  
(virender)

**( Sushil Kukreja )**  
**Judge**