



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 503 of 2023

Reserved on: 29.5.2023

Decided on: 02.06.2023

Diwan Chand

.....Petitioner

Versus

Shamsher Singh

.....Respondent

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the petitioner:

**Ms. Mamta K. Bhatwan,
Advocate.**

For the respondent:

Mr. Vinod Sharma, Advocate.

Satyen Vaidya, Judge

By way of instant petition, petitioner has prayed for the following relief:

“It is, therefore, respectfully prayed that this application may kindly be allowed and the sentence imposed in the criminal complaint No.180-3 of 2019/17, titled as Shamsher Singh V/s Diwan Chand, dated 15.10.2019 may kindly be set-aside and the petitioner may kindly be acquitted in the interest of justice and fair play.”

2. The petitioner was prosecuted by respondent for offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, ‘N.I. Act’) in Criminal

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

Case No. RBT 180-3 of 2019/17 before learned Additional Chief Judicial Magistrate, Court No.1, Rohru, District Shimla, H.P.

3. Petitioner was convicted for the above noted offence by learned trial Court and was sentenced to undergo simple imprisonment for a period of one year and to pay compensation to the tune of Rs.1,00,000/- to the complainant/respondent. The appeal preferred by petitioner was dismissed by learned Additional Sessions Judge (II), Shimla (Camp at Rohru), District Shimla, H.P. vide judgment dated 07.10.2021 passed in Criminal Appeal No. 14-R/10 of 2020. Thereafter, petitioner approached this Court by way of Cr. Revision No. 369 of 2021, but again remained unsuccessful. His petition was dismissed by a co-ordinate Bench of this Court vide judgment dated 15.5.2023.

4. Petitioner has now invoked inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (for short 'the Code') for allowing him to compound the offence under Section 138 of the N.I. Act on the basis of a compromise arrived at between him and

respondent/complainant on 17.5.2023. The deed of compromise has also been placed on record as Annexure P-4. It is submitted that after passing of judgment by this Court in Criminal Revision No.369 of 2021, the matter stands compromised between the parties. The respondent/ complainant has received entire due amount from the petitioner/convict and in view of such compromise the respondent/complainant is no more interested in the petitioner/convict undergoing sentence imposed upon him.

5. On 29.5.2023, the parties were present before the Court. The statement of respondent/complainant was recorded on oath. The respondent had specifically stated that the matter had been amicably settled by petitioner with him. He verified the contents of compromise Annexure P-4 and also identified his signatures thereon. He further stated that in view of the compromise, he had no objection in case the conviction recorded against petitioner on his complaint was quashed and set-aside.

6. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

7. The offence under Section 138 of the N.I. Act has been made compoundable under Section 147 of the Act *ibid.* The question arises whether such composition can be allowed even after the accused stands convicted and sentenced and the judgment of conviction is upheld even by this Court in revision preferred by the accused?

8. Section 362 of the Code bars the Criminal Courts from altering or reviewing its judgment or final order except to correct clerical or arithmetical error. This provision however, has been made subject to other provisions contained in the Code or any other law for the time being in force. Section 482 of the Code, saves inherent powers in this Code to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

9. Thus, in appropriate cases, this Court in exercise of its inherent power under Section 482 of the Code can alter or review its judgment or final order in order to secure the ends of justice. Every civilized society and the legal/judicial system adopted by it longs for

maintenance of peace and harmony between its subjects. Every step that furthers the above cause or seeks to maintain peace and harmony in the society can be accepted as a means to secure the ends of justice.

10. In Cr.M.P. No. 1198 of 2017 in Cr. Revision No. 394 of 2015 titled **Gulab Singh vs. Vidya Sagar Sharma**, a similar proposition had arisen before a co-ordinate Bench of this Court and it was decided in favour of composition of offence even at the stage when the revision petition filed by the accused before this Court had been dismissed. Reliance was placed on following extract of the judgment passed by the Hon'ble Supreme Court in **K. Subramanian Vs. R. Rajathi reported in (2010) 15 SCC**

352:

“6. Thereafter a compromise was entered into and petitioner claims that he has paid Rs.4,52,289/- to respondent. In support of this claim, the petitioner has produced affidavit sworn by him on December 1, 2008. The petitioner has also produced affidavit sworn by P.Kaliappan, Power of Attorney holder of R.Rajathi on December 1, 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 July 30, 2008 and has undergone the sentence imposed on him by the Trial Court and confirmed by Sessions Court, High Court as well as by this Court. The two affidavits sought to be produced by petitioner as additional documents would indicate that indeed a compromise has taken place between petitioner and the respondent and the respondent has accepted the compromise offered by 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 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.”

11. In **2021 SCC Online SC 834**, titled as **Ramgopal vs. The State of Madhya Pradesh**, the Hon'ble Supreme Court has held as under:

“12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under [Section 482](#) Cr.P.C., even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter

adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving non-heinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under [Section 482 Cr.P.C.](#) would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under [Section 482 Cr.P.C.](#) may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in [Narinder Singh & Ors. vs. State of Punjab & Ors.](#) and [Laxmi Narayan \(Supra\).](#)”

12. On the strength of above exposition, I do not find any legal impediment in allowing the prayer made in the petition. In the case in hand, the dispute *inter-se* the parties was purely of private nature. The petitioner/accused owed some debt to the respondent/complainant. The cheque was issued by the petitioner/accused to discharge his liability. On cheque having remained unpaid, petitioner/accused had faced prosecution and consequent conviction for offence under Section 138 of the N.I. Act. Even though the conviction of petitioner/accused remained undisturbed in appeal as well as in revision filed before this Court, still the respondent/complainant came forward and showed his magnanimity by agreeing to compound the offence on receipt of his dues.

13. In such view of the matter, the prayer made in the petition deserves to be accepted as on one hand it will serve the interest of justice and on the other will not in any manner adversely affect the society at large.

14. Accordingly, the petition is allowed, the offence under Section 138 of the N.I. Act that was subject matter

of Criminal Case No. RBT 180-3 of 2019/17 before learned Additional Chief Judicial Magistrate, Court No.1, Rohru, District Shimla, is allowed to be compounded between the parties. The judgment of conviction and sentence order dated 15.10.2019/28.01.2020 passed by learned Additional Chief Judicial Magistrate, Court No.1, Rohru, District Shimla and affirmed in Criminal Appeal No. 14-R/10 of 2020 by learned Additional Sessions Judge (II), Shimla (Camp at Rohru), District Shimla on 07.10.2021 and in Cr. Revision No. 369 of 2021 on 15.5.2023 by a coordinate Bench of this Court, are set-aside and petitioner/accused is acquitted of all charges.

15. Petition stands disposed of in the aforesaid terms, so also the pending application(s), if any.

2nd June, 2023
(GR)

(Satyen Vaidya)
Judge