IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP No.1821 of 2026 in Cr.R. No.226 of 2024
Date of Decision: 15.05.2026

Gyaru Ram **.....Applicant/Petitioner**

Versus

Prem Singh **.....Non-applicants/Respondents**

Coram
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?

For the Petitioner: Petitioner in person with Mr. Ajay Kumar Dhiman, Advocate.

For the Respondents: Mr. Aman Hansretta, Advocate.

Sandeep Sharma, J. *(Oral)*

By way of instant application filed under Section 147 of Negotiable Instruments Act, prayer has been made by the applicant-accused for compounding of offence alleged to have been committed under Section 138 of the Act.

2. Precisely, the facts of the case as emerge from the record are that non-applicant/respondent/complainant **(for short 'complainant')** filed a complaint under Section 138 of the Negotiable Instruments Act **(for short 'Act')** in the competent court of law, alleging therein that he is running his business in the name and style of Chauhan Fruit Center, Shop No.31-A, New Subji Mandi, Rohru, Shimla, H.P. and he deals in sale and purchase of apples. He alleged that on 10.09.2019, accused purchased apple boxes from the complainant vide bill No.678, dated 10.09.2019 and with a view to discharge his lawful liability, accused issued Cheque No.284651, dated 15.09.2019, in the sum of ₹3,80,393/-, drawn at H.P. State Cooperative Bank, Branch Batargalu. However, on presentation of aforesaid Cheque to the Bank concerned, the same was dishonoured with

the remarks "Funds Insufficient". After receipt of aforesaid return memo, complainant served accused with a legal notice calling upon him to make the payment good well within stipulated time. However, since petitioner-accused failed to make the payment good within the time stipulated in the legal notice, respondent/complainant was compelled to initiate proceedings under Section 138 of the Act in the Court of learned Additional Chief Judicial Magistrate, Court No.1, Rohru, District Shimla, Himachal Pradesh.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment/order dated 26.7.2023, held the petitioner-accused guilty of having committed offence under Section 138 of the Act and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of ten months and pay compensation to the tune of ₹4,70,000/- to the respondent-complainant.

4. Though, at the first instance, accused preferred an appeal in the Court of learned Additional Sessions Judge, Rohru, Himachal Pradesh, however, same was dismissed vide judgment dated 29.02.2024. Being aggrieved and dissatisfied with the aforesaid judgment passed by learned first appellate Court, applicant-accused preferred Criminal Revision No.226 of 2023 in this Court, which also came to be dismissed vide judgment dated 23.03.2026.

5. Since after passing of aforesaid judgment dated 23.03.2026, applicant-accused compromised the matter with the complainant, whereby accused has paid the amount in question, as full and final settlement, to the complainant, applicant-accused has approached this Court in the

instant application praying therein for compounding of the offence under Section 147 of the Act.

6. Mr. Aman Hansretta, Advocate, while putting in appearance on behalf of respondent, states that he has instructions to depose on behalf of respondent. He states that respondent-complainant has compromised the matter with the petitioner-accused and as per the compromise, complainant has received the amount in question, as full and final settlement and as such, complainant shall have no objection in case the judgments of conviction and order of sentence passed by the learned Courts below are quashed and set aside and the petitioner is acquitted of the charge framed against him. However, he states that some amount on account of litigation charges may be awarded in favour of complainant, because he was unnecessarily dragged into litigation for realization of his own money. His statement made is taken on record.

7. While considering the prayer made in the application, the question which needs to be decided at first instance is that "whether after upholding the judgment of conviction and order of sentence passed by learned court below, this Court can proceed to compound the offence or not?."

8. This Court vide judgment passed in Cr.MP No. 1197 of 2017 in Cr. Revision No. 394 of 2015 titled **Gulab Singh** v. **Vidya Sagar Sharma**, while relying upon judgment of Hon'ble Apex Court as well as other Constitutional Courts has already held that court, while exercising power under Section 147 of Act can proceed to compound offence even in those

cases, where accused stands convicted. Relevant portion of the order passed by this court in order supra is reproduced as under:

> "8. Before acceding to aforesaid joint request having been made by learned counsel for the respective parties, moot question arise for determination of this Court is whether it has power to review/recall its own order/judgment passed in Criminal Revision No.394 of 2015, wherein judgment of conviction recorded by both the Courts below came to be upheld.
> 9. Mr. Manohar Lal Sharma, learned counsel representing the petitioner, has invited attention of this Court to the judgment passed by Hon'ble High Court of Rajasthan in Naresh Kumar Sharma versus State of Rajasthan & another, Criminal Misc. Application No.371 of 2016 in Criminal Revision Petition No.1267 of 2016, to suggests that in view of amicable settlement arrived inter se the parties, this Court has power to recall its judgment in the light of the provisions contained in Section 147 of the Act, which permits compounding of the offence under Section 138 of the Act. At this stage, it would be profitable to reproduce the judgment passed by Hon'ble High Court of Rajasthan hereinbelow:-
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> "The accused-petitioner has field this criminal misc. application under section 482 Cr.P.C read with section 147 of Negotiable Instruments Act(for short the 'Act') with a prayer to review/recall the order dated 6.10.2016 passed by this Court in SB Criminal Revision Petition No.1267/2016 in the light of compromise dated 4.11.2016 subsequently entered between the parties and as a consequences thereof to acquit the accused petitioner for the offence under Section 138 of N.I. Act.
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> Vide order dated 6.10.2016, the aforesaid revision petition filed by the petitioner was dismissed by this Court while upholding and affirming the judgment and order of conviction and sentence passed by the trial Court as well as by the Appellate Court. It was jointly submitted by the learned counsel for the parties that after the order dated 6.10.2016 the parties have amicably settled their dispute and entered into compromise and the amount in the dispute has been paid by the petitioner to the respondent-complainant.
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> It was further submitted that although the revision petition has been dismissed by this Court on merits vide order dated 6.10.2016, but even then that order can be recalled in the light of provisions of Section 147 of N.I.Act which permits compound of the offence under Section 138 of the Act at any stage and the accused can be acquitted.
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> In support of their submissions, they relied upon the case of K. Subramanian Vs. R.Rajathi reported in (2010) 15 SCC 352 and order dated 7.7.2015 passed by a Single Bench of Hon'ble Gujarat High Court in S.B. Criminal Misc. Application (Recall)

> No.10232/2015 filed in Special Criminal Application No.3026/2014.
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> On consideration of submissions jointly made on behalf of the respective parties and the material including the compromise entered into between the parties and the fact that the amount in dispute has been paid by the accused-petitioner to the respondent- complainant and the principles of law laid down in the aforesaid decisions, I find it a fit case in the criminal misc. application is to be allowed and the order dated 6.10.2016 is to be recalled.
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> Consequently, the criminal misc. application is allowed and the order dated 6.10.2016 is recalled and all the orders whereby the accused-petitioner was convicted and sentenced for the offence under Section 138 of N.I. Act are set aside and as a consequence thereof he is acquitted therefrom."

9. Reliance is also placed upon the judgment passed by Hon'ble Gujarat High Court, wherein similar application came to be filed for recalling the judgment passed by the Hon'ble High Court of Gujarat. In the aforesaid judgment, Hon'ble Gujarat High Court, has reiterated that judgment passed by the High Court affirming the judgment of conviction recorded under Section 138 of the Act, can be recalled in view of the specific provisions contained in Section 147 of the Act, which provides for compounding of offence allegedly committed under Section 138 of the Act.

10. The Hon'ble Apex Court in **K. Subramanian Vs. R.Rajathi; (2010)15 Supreme Court Cases 352**, also in similar situation ordered for compounding of offence after recording of conviction by the courts below, wherein it has been held 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.
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> 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."

11. The Hon'ble Apex Court in the aforesaid judgment has categorically held that in view of the provisions contained under Section 147 of the Act, read with Section 320 of Cr.P.C, compromise arrived inter se the parties can be accepted and offence committed under Section 138 of the Act, can be ordered to be compounded. Hon'ble Apex Court in ***Damodar S. Prabhu V. Sayed Babalal H. (2010) 5 SCC 663,*** has categorically held that offence punishable under Section 138 of the Negotiable Instruments Act can be compounded after recording of conviction, hence this Court while exercising power under Section 528 of BNSS read with Section 147 of the Act, can proceed to compound the offence alleged to have been committed by the petitioner and set-aside judgment of conviction recorded by the Courts below.

12. Consequently in view of the detailed discussion made hereinabove as well as law laid down by the Hon'ble Apex Court, this Court holds that present application for compounding of offence after dismissal of

criminal revision petition vide judgment dated 23.03.2026, is maintainable and as such, parties are permitted to get the matter compounded in the light of the compromise arrived *inter se* them. Accordingly, judgment(s) of conviction and sentence recorded by the learned trial Court are quashed and set-aside and petitioner is acquitted of the charge framed against him. Application stands disposed of.

13. Since respondent/complainant was compelled to engage in unwarranted litigation with the petitioner/accused for realization of his own money, petitioner-accused is directed to pay a sum of ₹5000/- as litigation charges in favour of respondent/complainant and further to deposit ₹5000/- with the H.P. State Legal Service Authority as compounding fee, within a period of eight weeks, failing which petitioner/accused shall render himself for penal consequences as well as Contempt of Court.

(Sandeep Sharma)
Judge

May 15, 2026
Rajeev Raturi