

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Revision No.1878 of 2015 (O&M)
Date of decision : 29.06.2015**

Kewal Singh

.....Petitioner(s)

Versus

Ripandeep Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Iqbal Singh Mann, Advocate
for the petitioner.

None for the respondent.

ANITA CHAUDHRY, J.(ORAL)

Notice had been sent to the respondent. He has failed to appear. The case has been taken up again for the second time, still there is no appearance.

Heard.

The petitioner is aggrieved by the order dated 06.05.2015 passed by the Additional Sessions Judge, Sri Muktsar Sahib, vide which the appellate Court while allowing bail to the appellant in his appeal made it conditional directing him to deposit 25% of the fine amount.

The counsel for the petitioner contends that the appellant had been sentenced to undergo rigorous imprisonment for 2 years along with fine of Rs.16 lacs and the Magistrate in his order dated 07.04.2015 had ordered that out of Rs.16 lacs, an amount of Rs.5,000/- would be treated as fine and the remaining

amount would be compensation which would be paid to the complainant. He urges that an appeal was filed and the Appellate Court could not have directed him to pay the amount when the appeal is pending. He seeks support from ***Kedar Nath Vs. State of Haryana and another 2006(4) RCR (Crl.) 582.***

The trial Court has convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act and had sentenced him to undergo rigorous imprisonment for 2 years along with a fine of Rs.16 lacs. A further order was made. Out of Rs.16 lacs, Rs.5,000/- was ordered to be treated as fine. The remaining amount of Rs.15,95,000/- was to be the compensation to be paid to the complainant.

Against the judgment of conviction and order of sentence an appeal was preferred by the petitioner which was admitted for hearing. While suspending the sentence, the appellate Court imposed a condition directing him to deposit 25% of Rs.15,95,000/-. Such a condition could not be imposed by the appellate Court when the appeal was pending. Out of the fine of Rs.16 lacs, major amount of Rs.15,95,000/- was ordered to be paid to the complainant as compensation but that does not change the nature of fine. The appellate Court was not justified in imposing a condition when his appeal was still under consideration.

A Division Bench of this Court in its order dated May 26, 2004 passed in Criminal Appeal No. 99-DB of 2004 titled as [Jaspal Singh and Anr. v. State of Punjab](#) has observed as under:

“...The question, which, we are called upon to answer while disposing of the Criminal Misc., is whether according to the provisions of Code of Criminal Procedure any order regarding suspension of sentence is actually required to be passed. In other words, whether the proceedings for recovery of fine at can at all be initiated during the pendency of the appeal.

In order to answer this question, we may peruse with benefit the language of Section 357(2) Cr.P.C., which reads as under:

357. Order to pay compensation:

(1) XXX XX XXX XXX (2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.

(3) to (5) xxx xxx xxx.

A perusal thereof shows that proceedings for recovery of fine cannot be started until the period for filing appeal has elapsed and in case where the appeal has been presented, before the decision of the appeal.

In view of the above, the petition is allowed and the impugned order dated 06.05.2015 is set aside and the petitioner is ordered to be released on furnishing bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of Appellate Court.

29.06.2015
sunil

(ANITA CHAUDHRY)
JUDGE