

236-A

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

CRR-2444-2014

Date of decision : 10.12.2015

Parveen Kataria

..... Petitioner

VERSUS

Virgo Polycab Marketing

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Amit Tiwari, Advocate for the petitioner.

Mr. Anish Garg, Advocate for respondent.

M.M.S. BEDI, J.(Oral)

Petitioner was convicted vide order dated 16.08.2011 Annexure P-3 in proceedings under Section 138 of Negotiable Instruments Act by the Judicial Magistrate First Class, Chandigarh. He preferred to file an appeal. The Appellate Court had decided the appeal vide order dated 25.03.2014 in absence of the petitioner as is apparent from the order Annexure P-I.

It is not out of place to observe that the complainant had also filed a revision petition for enhancement of the sentence. The Appellate Court considering the revision petition of the complainant, has modified the sentence by increasing the period of imprisonment and enhancing the compensation.

Aggrieved by the order dated 25.03.2014, the petitioner has filed two petitions, one the instant revision petition and the other CRM-M-27899 of 2014 under Section 482 Cr.P.C.

Learned counsel for the petitioner submits that the petitioner is entitled to the quashing of the criminal proceedings as well as the setting aside the conviction order subject he is heard.

Without expression of any opinion on merits of the case, I am of the considered opinion that the accused having been convicted in a criminal case can be heard if he is in custody or he is before the Court on bail. The petitioner after the conviction order passed by the Appellate Court has neither went in custody nor he is on bail. Moreover, he has not sought any relief for protection of his liberty. However, vide order dated 19.08.2014, a Coordinate Bench of this Court had stayed the execution of the warrants of arrest issued against the petitioner, passed on the basis of his conviction order dated 25.03.2014.

Taking into consideration the situation that the petitioner has been convicted in his absence or his counsel, order dated 25.03.2014 passed by the Appellate Court deserves to be set aside, subject to the condition that the petitioner will surrender before the Sessions Judge, Chandigarh on or before 19.12.2015 in order to give a fair opportunity to get

adjudication of the matter on merits. It is ordered that on his appearance before the Sessions Judge, Chandigarh on or before 19.12.2015, he will be released on bail on his furnishing bail bonds for a sum of Rs.1,00,000/- with one surety in the like amount. After the petitioner is released on bail, the appeal as well as revision petition will be taken up for adjudication on merits by the Sessions Judge or by any other Court to which the cases are entrusted. Further, a direction is issued that the appeal as well as revision would be decided within a period of three months after 19.12.2015.

Taking into consideration the fact that the respondent-complainant has unnecessarily been harassed by the delaying tactics adopted by the petitioner, it is ordered that a sum of Rs.50,000/- will be paid to the complainant in the shape of a bank draft in the name of complainant-Company on 19.12.2015. This compensation would be deemed to be costs as per Explanation 2 appended to Proviso of Section 309 (2) Cr.P.C.

It is made clear that in case the petitioner fails to appear before the Sessions Judge, Chandigarh on or before 19.12.2015 or fails to pay costs on the date he appears, this revision petition will be deemed to be dismissed.

Learned counsel appearing for the petitioner, at this stage, has given an undertaking, that in case the petitioner is given time to appear before the Sessions Judge, Chandigarh on

23.12.2015, he would take the responsibility for compliance of this order.

In view of said circumstances, the date is changed from 19.12.2015 to 23.12.2015. The petitioner will comply with the order passed by this Court as per undertaking given on his behalf by his counsel.

The revision petition is disposed of accordingly.

A copy of this order, under the signatures of the Court Secretary of this Court, be given to counsel for the petitioner dasti within two days.

The order be also conveyed to the Courts below forthwith.

December 10, 2015
Ramandeep Singh

(M.M.S. BEDI)
JUDGE