

COCP No.332 of 2015

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

**COCP No.332 of 2015  
Date of decision:21.10.2016**

Sanjay Kumar

...Petitioner

Versus

Ramesh

...Respondent

**CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Akshay Kumar Jindal, Advocate,  
for the petitioner.

Mr. S.K.Rana, Advocate,  
for the respondent.

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**Rakesh Kumar Jain, J. (Oral)**

This petition is filed under Section 12 of the Contempt of Court Act, 1971 for taking appropriate action against the respondent for his willful disobedience of the undertaking given to the Court of JMIC, Karnal, on 30.09.2014.

In brief, the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the “Act of 1881”) against the respondent in respect of a cheque dated 17.04.2010 of ₹5,80,000/-, which was dis-honoured on account of “insufficient funds”. During those proceedings, the respondent suffered a statement on 30.09.2014 that the matter has been compromised between the parties according to which, the respondent would pay ₹5,50,000/- to the petitioner upto 17.11.2014. He handed over a duly signed cheque No.013858 dated 17.11.2014, amounting to ₹5,50,000/-, to the petitioner from his account of

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Oriental Bank of Commerce, Branch Israna, District Panipat. It was stated that in case the respondent pays the amount in question in cash against receipt by 17.11.2014, then the petitioner would not present the cheque and if the respondent fails to pay the amount, then the petitioner would be at liberty to present the cheque in the bank and also to take legal action against the respondent.

As per the case of the petitioner, in view of the aforesaid statement and compromise, he withdrew his complaint filed under Section 138 of the Act of 1881 on 30.09.2014 and the following order was passed by the JMIC, Karnal:-

“Today case was fixed for making payment as well as remaining complainant evidence. At this stage, both the parties appeared and stated at Bar that the matter has been compromised between them. Separate statements of both parties recorded to this effect. Heard. Keeping in view the statements suffered by both the parties, the present complaint is hereby dismissed as withdrawn. File be consigned to the record room after due compliance.”

It is submitted by the petitioner that the respondent did not make the payment in cash upto 17.11.2014 and then the petitioner presented the cheque in his bank for the purpose of its encashment but it was again dis-honoured on 18.11.2014 because of “insufficient funds”. The petitioner then, before taking any legal action against the respondent, served a legal notice upon him in which it was clearly mentioned that in case the amount is not paid by the respondent within 15 days, then even the criminal contempt would be filed against him. Since the legal notice had also got no desired effect, therefore, the petitioner filed the present petition, in which notice of motion was issued on 10.02.2015 returnable on 07.09.2015. On

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07.09.2015, nobody appeared on behalf of the respondent despite service, therefore, this Court issuedailable warrants to secure presence of the respondent. On the adjourned date i.e. 19.02.2016, the following order was passed by this Court:-

“When the case was called out in the morning, Mr.Wazir Singh, Advocate appeared for the respondent and stated that respondent is in the process of getting a Pass for entry into the High Court. The case was then passed-over, but when the case was called out again, there is no representation on behalf of the respondent who has also not come present. The issue pertains to the payment of amount to the petitioner on the basis of statement made by the respondent in the trial Court where proceedings under Section 138 of the Negotiable Instruments Act were pending.

Since the respondent has failed to turn up in Court despiteailable warrants having been issued against him, the Court would have no option but to issue non-bailable warrants to secure his presence for the adjourned date.

List for further proceedings on 8.4.2016.”

On the next date of hearing i.e. 08.04.2016, the following order was passed by this Court:-

“Though non-bailable warrants issued against the respondent have been received back un-executed, still Mr. Ramender Chauhan, Advocate, has appeared for the respondent and sought time. He assures that the respondent will be present in Court in person on the next of hearing.

Adjourned to 19.05.2016.”

Counsel for the petitioner has submitted that the entire act and conduct of the respondent is highly contumacious as he has a scant regard to the authority of law as not only he had breached his undertaking given to the Court as a result thereof, the complaint filed by the petitioner under Section 138 of the Act of 1881 was dismissed as withdrawn but also did not

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pay the amount and has been playing hide and seek with this Court as well, as he did not appear despite issuance ofailable warrants and his presence had to be secured only after issuance of non-ailable warrants.

Counsel for the petitioner, while referring to Section 2(c)(i) of the Contempt of Courts Act, 1971 (hereinafter referred to as the “Act”), has submitted that the respondent has committed civil contempt as there is a breach of the undertaking given to the Court at his instance and has prayed that an appropriate order may be passed for his punishment in terms of Section 12 of the Act.

On the other hand, counsel for the respondent has submitted that the respondent has paid the amount to the petitioner and had a complaint under Section 138 of the Act of 1881 been filed on account of dis-honour of the cheque given by him to the petitioner, then he would have led the evidence before the trial Court. However, he has very fairly stated at the bar that he does not have any evidence at present to prove the payment of the money claimed by the petitioner and as agreed to be paid by him in his statement dated 30.09.2014 suffered before the trial Court. It is also submitted by him that the punishment under the Act of 1881 is much more than that of the punishment provided under the Act and the petitioner has allegedly filed this petition for the purpose of twisting his arm to recover the amount again.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that this is one such case in which willful disobedience on the part of the respondent is writ large, who has shown no respect at all to the law and also to his own words which he

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had given to the trail Court on 30.09.2014.

Thus, I am of the considered opinion that there is a clear cut willful disobedience on the part of the respondent much-less breach of the undertaking dated 30.09.2014, for which he is liable to be punished under Section 12 of the Act.

Consequently, the present petition is hereby allowed and the respondent is held guilty of the contempt of the Court and is convicted for a period of six months' simple imprisonment with fine of ₹2,000/- and in case of failure to pay the fine, he shall suffer further sentence of another one month.

A copy of this order be sent to the Chief Judicial Magistrate, Karnal for taking the respondent into custody immediately for the purpose of his serving the sentence.

**October 21, 2016**  
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**(Rakesh Kumar Jain)**  
**Judge**

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No