

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

(1) CRM No.M-40279 of 2017 (O&M)

M/s Shree Conveyor System Pvt. Ltd. and another
...Petitioners

VERSUS

M/s Shiv Shakti Steel
...Respondent

(2) CRM No.M-40307 of 2017 (O&M)

M/s Shree Conveyor System Pvt. Ltd. and another
...Petitioners

VERSUS

M/s Shiv Shakti Steel
...Respondent

Date of Decision: November 13, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Rai, Senior Advocate with
Mr.Anurag Arora, Advocate
for the petitioners.

Mr.Deepak Vashishth, Advocate
for the respondent.

INDERJIT SINGH, J.

This order shall dispose of both the above-mentioned connected
cases as the point for determination in both the cases is the same.

The above-mentioned petitions have been filed by petitioners-
accused under Section 482 Cr.P.C. for partially quashing the impugned

order dated 10.10.2017 passed by learned Sessions Judge, Faridabad in criminal appeals No.964 and 965 of 2017 whereby while suspending the sentence, learned Sessions Judge, Faridabad, has imposed condition of furnishing bank draft or bank guarantee in favour of the complainant qua half of the cheque amount for grant of bail to the petitioners in two criminal appeals filed against the two different conviction and sentence orders dated 10.10.2017 passed by learned JMIC, Faridabad, under Section 138 of the Negotiable Instruments Act.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petitions.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that as per the impugned order dated 10.10.2017 passed by learned Sessions Judge, Faridabad in CRA No.964 of 2017 (CRM No.M-40279 of 2017), petitioners-applicants were admitted to bail on furnishing bail bonds and surety bonds for a sum of ₹1,00,000/- with a surety in the like amount to the satisfaction of the trial Court with further condition that the accused shall either furnish bank draft in favour of the complainant for an amount of ₹15,00,000/- (i.e. half of the cheque amount); or the bank guarantee to the extent of ₹15,00,000/- within 15 days from that day. In CRA No.965 of 2017 (CRM No.M-40307 of 2017), learned Sessions Judge, Faridabad, vide impugned order dated 10.10.2017 admitted the accused-petitioners to bail on furnishing bail bonds and surety bonds for a sum of ₹50,000/- with a surety in the like amount to the satisfaction of the trial Court with further condition that the accused shall

₹65,000/- (i.e. half of the cheque amount); or the bank guarantee to the extent of ₹65,000/-within 15 days from that day.

In both the cases, the petitioner was directed to furnish the bank draft/bank guarantee in both cases totaling to ₹15,65,000/-. The perusal of the impugned orders show that in the orders, the trial Court has not discussed the capacity of the petitioners to deposit the said amount. As per judgments of conviction and orders of sentence passed by learned JMFC, Faridabad, the petitioners have been sentenced to undergo rigorous imprisonment for a period of six months and to pay compensation to the tune of ₹45 lakhs in CRA No.964 of 2017 and ₹1,96,000 in CRA No.965 of 2017. Aggrieved from the above judgments of conviction and orders of sentence, appeals were filed by the petitioner, in which, the impugned orders, suspending the sentence of petitioner have been passed by learned Sessions Judge, Faridabad, but with the condition to furnish bank draft/bank guarantee in both cases totaling to ₹15,65,000/-.

Learned counsel for the petitioners argued that this condition of depositing the amount cannot be imposed and in support of his arguments, he cited judgment passed by this Court in ***CRR No.1867 of 2014 titled as Smt.Sunita Gupta vs. Manoj Kumar Mittal decided on 18.09.2014***, in which, by considering the law laid down in ***Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. & Anr. 2007(2) RCR (Criminal) 636***, it is held that the impugned order directing to deposit of ₹10 lakhs cannot be sustained. Learned counsel for the petitioner also cited judgment passed by the Hon'ble Supreme Court in ***Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. & Anr. 2007(2) RCR (Criminal) 636*** . On similar point, he also cited judgment

Mallick and another, 2013(4) RCR (Criminal) 648, in which it is held as under:-

“The second aspect relates precisely to the need for appreciating that the power to award compensation is not available under Section 138 of Negotiable Instruments Act. It is only when the Court has determined the amount of fine that the question of paying compensation out of the same would arise. This implies that the process comprises two stages. First, when the Court determines the amount of fine and levies the same subject to the outer limit, if any, as is the position in the instant case. The second stage comprises invocation of the power to award compensation out of the amount so levied. The High Court does not appear to have followed that process. It has taken payment of Rs.80,000/- as compensation to be distinct from the amount of fine it is imposing equivalent to the cheque amount of Rs.69,500/-. That was not the correct way of looking at the matter. Logically, the High Court should have determined the fine amount to be paid by the appellant, which in no case could go beyond twice the cheque amount, and directed payment of compensation to the complainant out of the same. Viewed thus, the direction of the High Court that the appellant shall pay a further sum of Rs.69,500/- does not appear to be legally sustainable as rightly observed by my erudite Brother Vikramajit Sen, J. I, therefore, entirely agree with my Brother’s view that payment of a further sum of Rs.20,000/- towards fine, making a total fine of Rs.1,00,000/- (Rupees one lac) out of which Rs.80,000/- has already been paid as compensation to the complainant, should suffice. The amount of Rs.20,000/- (Rupees twenty thousand) now directed to be paid shall not go to the complainant who is, in our view, suitably compensated by the amount already received by him. In the event of failure to pay the additional amount of Rs.20,000/- the appellant shall undergo imprisonment for a period of six months. With these words, I concur with the order proposed by Brother Vikramajit Sen, J.”

Learned counsel for the petitioners also cited judgment passed by the ***Hon'ble Rajasthan High Court in Amarveer Singh vs. Sate of Rajasthan and others, 2010(3) RCR (Criminal) 556***, on the same point, in which it is held that for suspension of sentence during appeal, onerous conditions should not be imposed. Such imposition is virtually denial of bail to the accused even though he is entitled for the same. It is also held

that when a matter is considered for hearing and the substantive sentence of the petitioner is ordered to be suspended then imposition of condition of payment of amount, out of fine or compensation, is not at all justified. This would mean that if a person who is not in a position to make payment of the said amount, his sentence would not be suspended and he would be deprived of hearing of appeal and will have to undergo sentence, although ultimately he may be acquitted.

Learned counsel for the petitioners also placed reliance upon the judgments passed by this Court in ***CRM No.M-24651 of 2015 titled as Devender Kumar Sharma @ Dev vs. Gaurav Enterprises decided on 18.12.2015, CRR No.1878 of 2015 titled as Kewal Singh vs. Ripandeep Singh, decided on 29.06.2015, CRM No.M-35141 of 2009 titled as Jiwan Goyal and another vs. Punjab Agro Industries Corporation Ltd. and another, decided on 13.10.2011 and Kedar Nath vs. State of Haryana and another, 2006(4) RCR (Criminal) 582.***

Keeping in view the laid down by the Hon'ble Supreme Court and this Court, I find that the condition imposed by learned Sessions Judge, Faridabad, upon the petitioner to deposit bank draft/bank guarantee in each case, is not as per law.

Therefore, finding merit in both the petitions, the same are allowed. The impugned orders dated 10.10.2017 passed by learned Sessions Judge, Faridabad, in aforesaid cases are set aside to the extent of imposing condition of furnishing of bank draft/bank guarantee i.e. half of the cheque amount in each case. The petitioners are directed to appear before learned trial Court/Duty Magistrate within 10 days from today and

learned trial Court/Duty Magistrate is directed to suspend the sentence and

admit them on bail on furnishing bail/surety bonds for a sum of ₹1 lakh in
CRA No.964 of 2017 and ₹50,000/- in CRA No.965 of 2017 to its
satisfaction.

November 13, 2017	(INDERJIT SINGH)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No