

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-42879-2017

Date of decision: 13.11.2017

Asha Grover and another

..... Petitioners

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Ms. Sheenu Sura, Advocate for the petitioners.

RAMENDRA JAIN, J. (ORAL)

1. Prayer in the instant petition Section 482 Cr.P.C., is for partially quashing the impugned order dated 27.10.2017 (Annexure P-1) of the Ist Appellate Court, directing the accused-petitioners to furnish a demand draft of ₹ 1,50,000/- in favour of complainant/respondent No. 2-NK Vashisth or a bank guarantee of the said amount, while suspending their sentence awarded by the trial Court, vide order of sentence dated 27.09.2017, holding them guilty under Section 138 of the Negotiable Instruments Act.

2. Learned counsel *inter alia* contends that the impugned order Annexure P-1, passed by the learned Ist Appellate Court, directing the petitioners to furnish a demand draft of ₹ 1,50,000/- or in the alternative a bank guarantee of the said amount, in favour of complainant/respondent No. 2-NK Vashisth, is illegal in view of the provisions of sub-section (2) of Section 357 Cr.P.C., inasmuch as, no condition can be imposed during the pendency of appeal to deposit the fine amount. In support of her

contentions, learned counsel has relied upon the judgments in (i) **Dilip S.**

3. After giving thoughtful consideration to the submissions made by learned counsel for the petitioners and going through the impugned order Annexure P-1, I find the instant petition completely frivolous and devoid of any merit for the simple reason that the impugned order has been misread or misconstrued by the petitioners. Much stress has been laid that putting any condition upon the petitioners while suspending their sentences by the Ist Appellate Court, is in contravention of the provisions of sub-section (2) of Section 357 Cr.P.C. For ready reference sub-section (2) of Section 357 Cr.P.C. is reproduced as under:-

(1) xxx 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 xxx”

4. Perusal of the aforesaid provision shows that the Ist Appellate Court, has not directed the petitioners to make payment or to deposit any amount towards fine, rather has put a condition to bring a demand draft or furnish a bank guarantee which is altogether a different matter, inasmuch as,

the same was ordered to be retained on Court file. Considering the aforesaid judgment of the Apex Court in **Dilip S. Dahanukar's case (supra)**, which was not brought to the notice of the co-ordinate Benches of this Court at the time of pronouncement of the aforesaid judgments relied upon by learned counsel for the petitioners, the Ist Appellate Court has rightly not given the benefit of the judgments of this Court referred to above by learned counsel for petitioners, more particularly, when the condition imposed by the Ist Appellate Court, does not seem to be unreasonable from any angle.

5. In view of the above, the instant petition fails and the same is hereby dismissed.

November 13, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No