

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

Decided on: 11.09.2018

1. CRM-M No.13784 of 2016(O&M)

Manohar Lal

....Petitioner

Versus

State of Haryana and others

....Respondents

2. CRM-M No.32740 of 2017 (O&M)

Krishan Kumar

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Atam Parkash Setia, Advocate
for the petitioner (in CRM-M No.13784 of 2016)
and for respondent No.5 (in CRM-M No.32740 of 2017)

Mr. Vipin Kumar, Advocate
for the petitioner (in CRM-M No.32740 of 2017)
and for respondent No.4 (in CRM-M No.13784 of 2016)

Mr. Naveen Sheoran, DAG, Haryana.
(in both the petitions)

ARVIND SINGH SANGWAN, J. (Oral)

On 15.05.2018, the following order was passed by this

Court:-

“CRM-M-32740-2017

*Prayer in this petition is for issuance of a direction
to respondents No. 1 to 4 to release the amount of Rs.19*

lacs deposited by respondent No.3 with respondent No.4, as per judgment of conviction dated 28.09.2011 and order of sentence dated 29.09.2011 passed by the trial Court as well as judgment dated 02.05.2012 (Annexure P2) passed by the Additional Sessions Judge, Fast Track Court, Sonapat.

Brief facts of the case are that the the petitioner-Krishan Kumar has filed a complaint under Section 138 of the Negotiable Instruments Act (for short 'the Act') on 09.03.2005 against Manohar Lal (respondent No.5) which was decided in favour of petitioner. Trial Court, vide judgment of conviction dated 28.09.2011 held respondent No.5 guilty for commission of offence punishable under Section 138 of the Act and vide order of sentence dated 29.09.2011, accused Manohar Lal was sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs.19,00,000/- (Rs. Nineteen Lacs only) and in default of payment of fine, he shall further undergo rigorous imprisonment for a period of 01 year. Thereafter, an appeal was preferred before the Lower Appellate Court and the same was dismissed vide judgment dated 02.05.2012 with the modification in the order of trial Court that after realizing the amount of Rs. 19 lacs, imposed as compensation, a sum of Rs. 9,50,000/- will be paid to the complainant as compensation and remaining amount of fine shall be treated as costs of proceedings. Thereafter, Manohar Lal filed CRR-1697-2012 which was decided on 28.04.2014 by reducing the sentence of 02 years RI to sentence of 01 year and 06 months RI. However, the sentence of fine with default clause was kept intact.

CRM-M-13784-2016

Prayer in this petition filed by accused Manohar Lal is that he has deposited the cheque amount i.e. Rs. 9.50

lacs and compensation of Rs. 09.50 lacs i.e. total Rs. 19 lacs, and he should be refunded the proportionate amount for which he has remained in excess custody of 95 days.

The matter was referred to the Mediation and Conciliation Centre of this Court and it was mutually agreed between the parties that out of Rs.19 lacs deposited with the Jail Superintendent of Police, Sonapat, the complainant Krishan Kumar is entitled to Rs. 14,75,000/- and accused Manohar Lal is entitled to refund of Rs.4,25,000/- on account of his stay in judicial lock up for 15 days in default of non-payment of fine of Rs.19 lacs.

During the course of arguments, it transpires that the trial Court while convicting Manohar Lal, has awarded the sentence of 02 years RI to respondent no.5 and to pay a fine of Rs.19 lacs which was modified by the Lower Appellate Court by holding that under Section 357 (3) Cr.P.C. compensation can be awarded only where fine does not form part of the sentence and in paragraphs 25 to 27, the following observations have been made by Lower Appellate Court:-

“25. It shall be relevant to mention here that since the complainant was to part with a sum of Rs.9,50,000/- lacs on account of dishonour of cheque, this court deems it sufficient that in case the fine amount is realized the complainant should be compensated by paying him the amount at least equal to the cheque amount.

26. No other point was urged.

27. There is no merit in the appeal. Consequently, the same is hereby dismissed. However, with the modification in the order of sentence to the extent that a sum of Rs. 19.00 lacs imposed as fine by the trial court if realized then a sum of Rs.9,50,000/- be paid to the complainant as compensation and remaining amount of fine shall be treated as cost of proceedings. Lower court record alongwith a copy of this judgment be sent back immediately. Custody warrant of appellant be prepared for carrying the sentence in accordance with law. Consign the file to records.”

While upholding the finding, this Court vide judgment dated 28.04.2014 has reduced the substantive sentence of Manohar Lal from two years RI to the period 01 year and 06 months. Since, as per the judgment dated 02.05.2012 passed by the Additional Sessions Judge, Fast Track Court, Sonapat, it has been held that complainant-Krishan Kumar is entitled for a sum of Rs.9,50,000/- as compensation and remaining amount of fine shall be treated as cost of proceedings, counsel for the petitioner seeks sometime to move an application for clarification in the order dated 28.04.2014 passed by this Court as to whether the fine of Rs.9,50,000/- is payable to the complainant or being cost of proceedings will go to the State, as no such finding can be recorded in the present petition which will amount to modification of the order of Additional Sessions Judge as upheld by this Court.

Adjourned to 09.08.2018, in order to enable the parties to seek clarification in the above said order.

Photocopy of this order be placed on the file of other connected case.”

Counsel for the petitioner has submitted that the petitioner has moved an application i.e. CRM No.23620 of 2018 filed in CRR No.1697 of 2012, seeking clarification of the order dated 28.04.2014, in which the following order has been passed by the Co-ordinate Bench of this Court on 20.07.2018:-

“Prayer in this application is for clarification of order dated 28.04.2014 with regard to fine amount of Rs.19 lakhs.

As this Court has not varied/reversed order passed by the Appellate Court as to how the amount of Rs.19 lakhs, imposed as fine, is to be appropriated, necessary inference can be drawn that the said order remains intact.

Disposed of accordingly.

20.07.2018

**(REKHA MITTAL)
JUDGE”**

The parties have appeared before the Mediation and Conciliation Centre of this Court on 15.05.2018, where both the parties i.e. Manohar Lal (first party) as well as Krishan Kumar (second party) along with their counsel have got their respective statements recorded, which reads as under:-

**“Re: CRM-M-13784 of 2016 and
CRM-M-32740 of 2017
Manohar Lal (first party) Vs. State of Haryana and
another
Krishan Kumar (second party) Vs. State of Haryana and
another**

These cases have been sent by the Hon'ble Mr. Justice A.S. Sangwan for recording the statement of the parties in the above mentioned cases which is as under:-

Manohar Lal (first party) states that I have no objection and I will be satisfied if an amount of Rs.4.25 lakh is refunded to me out of a total sum of Rs.19 lakh deposited with the Jail Superintendent, Sonipat as a fine imposed by JMIC, Sonipat vide his order dated 29.09.2011 in lieu of the period of imprisonment undergone by me against default clause of fine, and rest of the amount be released to second party – Kirshan Kumar.

Second party – Krishan Kumar states that I have no objection if an amount of Rs.4.25 lakhs is refunded to the first party – Manohar Lal out of a total sum of Rs.19 lakhs deposited with the Jail Superintendent, Sonipat by the first party and rest of the amount may be released to me.

15.05.2018

**(Divya Godara)
Mediator”**

As per the reply filed by way of an affidavit of the Superintendent Jail, District Jail, Sonapat, it is not disputed that the fine deposited by the accused is payable to the complainant as compensation. It is also stated that the petitioner was released from all the substantive sentences on 19.10.2015 and on deposit of an amount of Rs.19 lacs, which was deposited by Smt. Pushap Lata wife of Manohar Lal vide 03 receipts/e-challan of Rs.19 lacs, Rs.1.50 lacs and Rs.80,000/-. It is further stated that the fine of Rs.10,000/-has also been paid in FIR No.358 dated 15.11.2006 registered under Sections 409, 420, 467, 468, 471 and 120-B IPC at Police Station Sadar Sonapat and Manohar Lal was finally released from the jail on 20.02.2016 on expiry of all substantive sentences in all the cases and on payment of the aforesaid amount.

Since both the parties have amicably settled their dispute before the Mediator of this Court, as per their statement dated 15.05.2018, I dispose of the aforesaid two petitions in the light of their statements made by both the parties and direct that the petitioner – Manohar Lal (first party) before the Mediator is entitled to refund of Rs.4.25 lacs out of the total amount of Rs.19 lacs, deposited with the Superintendent Jail, Sonapat as fine, which was imposed by the Judicial Magistrate Ist Class vide order dated 29.09.2011 in lieu of the period of imprisonment undergone by him against the default clause of fine and the remaining amount i.e. Rs.14.75 lacs will be refunded to the petitioner – Krishan Kumar, in terms of the settlement arrived at between the parties.

Even otherwise, as per the provisions of Section 69 of the Indian Penal Code, 1860 (in short 'IPC'), the petitioner – Manohar Lal, who was undergoing the sentence under the default clause on account of non-payment of fine, is entitled to refund of the proportionate amount of the period of sentence under the default clause, after the entire amount of the fine was paid and he was released.

Section 69 of IPC, reads as under:-

“69. Termination of imprisonment on payment of proportional part of fine.

If, before the expiration of the term of imprisonment fixed in default, of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default, of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.”

Therefore, in view of the settlement arrived at between the parties and as per the provisions of Section 69 IPC, the petitioner – Manohar Lal is held entitled to refund of Rs.4.25 lacs and the petitioner – Krishan Kumar is entitled to receive the remaining amount of Rs.14.75 lacs.

With the aforesaid observations, both these petitions are disposed of.

The Superintendent Jail, Sonapat will refund the amount in the aforesaid terms to both the parties.

11.09.2018

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**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No