

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

CRM-M-17200-2018

Date of decision:-25.4.2018

Gaurav Gupta

...Petitioner

Versus

Mrs.Damini Pahwa

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Sarfraj Hussain, Advocate
for the petitioner.

H.S. MADAAN, J.

The complainant Mrs.Damini Pahwa had filed a complaint under Section 138 of Negotiable Instruments Act against Gaurav Gupta. Vide judgment dated 28.2.2018, Judicial Magistrate Ist Class, Faridabad while convicting the accused for the offence under Section 138 of NI Act sentenced him to undergo simple imprisonment for a period of six months and to pay compensation to the tune of Rs.37 lakhs i.e. the cheque amount to the complainant under Section 143(1) (proviso) of Negotiable Instruments Act read with Section 357(1)(3) Cr.P.C. within a period of one month from passing of the judgment observing that compensation amount if not paid in time shall be recoverable under Sections 421/431 Cr.P.C.

Feeling aggrieved the accused had preferred an appeal to the Court of Sessions. Learned Sessions Judge, Faridabad while entertaining the appeal and suspending the sentence of appellant/accused

has observed as under:

In the present case, the amount of the dishonoured cheque is ₹37,00,000/-, although the learned trial Court has directed appellant to pay compensation amount of ₹37,00,000/-. Appellant is admitted to bail on furnishing bail bond in the sum of ₹1,00,000/- with a surety in the like amount to the satisfaction of this Court. Further, conditions are imposed upon the appellant that he shall either furnish:

- a) Bank draft for an amount of ₹18,50,000/-(i.e. Half of the cheque amount; or*
- b) The bank guarantee to the extent of ₹18,50,000/- or*
- c) FDR to the extent of ₹18,50,000/-,*

in favour of the complainant within 15 days from today. If the draft/FDR is furnished by him, it shall be retained on the Court file. In case appeal is ultimately accepted, the draft/FDR shall be returned to the appellant and if the appeal is dismissed, the draft/FDR shall be given to the complainant-respondent to be adjusted in the compensation amount. In case appeal is not disposed of prior to the validity period of FDR/Bank draft, the appellant shall furnish the fresh draft/FDR of the same amount with fresh validity period, till the appeal is disposed of. If the bank guarantee is furnished, the same shall be cancelled in case appeal is accepted; whereas in case the appeal is dismissed, the bank guarantee shall be utilized for making payment to the complainant. Ordered

accordingly.

The case had been adjourned to 26.4.2018 for furnishing bank guarantee/draft/FDR.

Feeling aggrieved by the said order, the petitioner has filed the present petition.

I have heard learned counsel for the petitioner besides going through the record and I do not find anything wrong with the impugned order much less the direction with regard to furnishing bank draft in favour of complainant for an amount of ₹18,50,000/- i.e. half of the cheque amount or the bank guarantee or FDR to that extent within fifteen days of passing of the order.

While passing the order, learned Sessions Judge, Faridabad has placed reliance on the observations made in authority **Dalip S. Dahanukar Versus Kotak Mahindra Co. Ltd. 2007(2) RCR(Criminal) 636** by the Apex Court wherein it had been observed as under:

- i) In a case of this nature, Sub-Section (2) of [Section 357](#) of the Code of Criminal Procedure would be attracted even when Appellant was directed to pay compensation;
- ii) The Appellate Court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;
- iii) The amount of compensation must be a reasonable sum;
- iv) The Court, while fixing such amount, must have regard to all relevant factors including the one referred to in Sub-Section (5) of [357 of the Code](#) of Criminal Procedure;
- v) No unreasonable amount of compensation can be directed to be paid.

Keeping in view the cheque amount of Rs.37 lakhs and compensation awarded by trial Magistrate of Rs.37 lakhs, the direction issued to the appellant to deposit ₹18,50,000/- cannot be said to be unreasonable or harsh. The petitioner is feeling aggrieved without any reason and there is no ground to accept the petition and set aside the condition regarding deposit of ₹18,50,000/- in form of bank draft or bank guarantee or FDR.

The petition being without merit stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

25.4.2018
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No