

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

CRM-M-19603-2018

Date of decision:-9.5.2018

Devender Singh

...Petitioner

Versus

Gurukul Inderprasth Managing Committee

...Respondent

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

Present : Mr.Vikas Kumar, Advocate
for the petitioner.

H.S. MADAAN, J.

The complainant Gurukul Inderprasth Managing Committee having its office Gurukul Inderprasth, Arya Nagar, Sarai Khawaja, Faridabad had filed a complaint under Section 138 of Negotiable Instruments Act against accused Devender Singh. Vide judgment dated 10.4.2018, 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.60 lakhs i.e. 1.5 times of 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. The appeal came up for hearing before the learned Sessions Judge, Faridabad on 1.5.2018. An application for suspending the sentence and for grant of bail to the appellant-accused was moved. Learned Sessions Judge, Faridabad was of the view that before giving benefit of Section 389(3) Cr.P.C. and releasing the appellant-accused on bail, reasonable conditions should be imposed upon him. At that time learned counsel for the appellant-accused had submitted that it was a legal and constitution right of the accused to get bail and no condition could be imposed. In support of his contention, he had referred to authorities **Kedar Nath Vs. State of Haryana 2006 (4) RCR(Criminal) 582 (P&H)**; and **Dalip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. 2007(2) RCR(Criminal) 636.**

Learned Sessions Judge, Faridabad considered such contentions put forward by learned counsel for the appellant-accused and observed that in authority **Dalip S. Dahanukar's** referred to by learned counsel for the appellant-accused, the Apex Court had observed that the appellate Court can suspend the sentence and can put the appellant on terms. He has also considered the law laid down in authority **Rajnikant Nathalal Maniar Vs. Jagdish Jasvantlal Patwa & others 2017 (2) RCR(Criminal) 180 (Gujarat)** to the effect that as observed by the Apex Court in **Dalip Dahanukar's** case, at the most Court has to see that such condition should not be harsh to the extent that the petitioner may not be released on bail at all for non-compliance of such condition and thereafter the Gujarat High Court went held that except that it cannot be said that no condition whatsoever could be imposed or imposition of the condition is illegal. 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 ₹20,00,000/-, although the learned trial Court has directed appellant to pay compensation amount of ₹30,00,000/-. 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 ₹10,00,000/-(i.e. half of the cheque amount); or

b) The bank guarantee to the extent of ₹10,00,000/- or

c) FDR to the extent of ₹10,00,000/-,

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 22.5.2018 for furnishing bank guarantee/draft/FDR.

Feeling aggrieved by the said order, the petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer for quashing such conditions imposed by learned Sessions Judge, Faridabad.

Learned counsel for the petitioner has contended that the conditions imposed are unreasonable and harsh and are bound to be set aside. In support of his such contentions, he has referred to various judgments delivered by Co-ordinate Benches of this Court in CRM-M-24651-2015 titled **Devender Kumar Sharma @ Dev. Versus Gaurav Enterprises**, decided on 18.12.2015, CRR-1867-2014 titled **Smt.Sunita Gupta Versus Manoj Kumar Mittal**, decided on 18.9.2014 and CRR-1878-2015 titled **Kewal Singh Versus Ripandeep Singh**, decided on 29.6.2015.

Learned counsel for the petitioner has further submitted that the judgments passed by the Co-ordinate Benches are binding and in case a different view is to be taken then the matter needs to be referred to a larger bench.

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 ₹10,00,000/- 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.20 lakhs and compensation awarded by trial Magistrate of Rs.30 lakhs, the direction issued to the appellant to deposit ₹10,00,000/- 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 ₹10,00,000/- in form of bank draft or bank guarantee or FDR.

As regards the judgments referred to by learned counsel for the petitioner, those were given in light of the particular facts and

circumstances of each case and cannot be taken as settled precedent although the facts and circumstances of the other cases are quite different. The Court has to consider various factors like the cheque amount, conduct of the parties, equity and whether the conditions imposed by the Appellate Court can be termed as harsh or unreasonable. It has to be viewed in each and every case individually and it cannot be taken that any condition imposed by the Appellate Court while suspending the sentence of an accused and granting him bail in a cheque bouncing case is to be set aside, even though it may be just and reasonable under the circumstances of the case.

As regards, making reference to the larger bench, in view of the ratio of authority *National Insurance Company Limited Versus Pranay Sethi and Ors., 2017 0 ACJ 2700*, as already observed each case is to be decided on its own facts and circumstances considering various factors. Therefore, there is no question of observations made in one judgment by a Co-ordinate Bench on facts of those case being binding on the other Co-ordinate Bench irrespective of the different facts and circumstances. Thus, the request of the learned counsel for the petitioner does not call for acceptance.

The petition being without merit stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

9.5.2018
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No