

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

CRM-M-20830-2018(O&M)

Date of decision:-15.5.2018

S.K. Nandy

...Petitioner

Versus

State of Haryana and another

...Respondents

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

Present : Mr.Rajesh Lamba, Advocate
for the petitioner.

H.S. MADAAN, J.

The complainant M/s Bhardwaj SteelCorporation through its Proprietor Sh.Hemant Sharma had filed a complaint under Section 138 of Negotiable Instruments Act against accused M/s Souvik Engineering Private Ltd. through its Director/principal Officer S.K. Nandy. Vide judgment dated 26.2.2018, 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.3,20,586/- i.e. the cheques 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 Additional Sessions Judge, Faridabad on 27.3.2018. An application for suspending the sentence and for grant of bail to the appellant-accused was moved. Learned Additional 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.

Learned Additional 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 Rs.3,20,586/- and the learned trial Court has directed appellant to pay compensation amount of Rs.3,20,586/-. Appellant is admitted to bail on furnishing bail bond in the sum of ₹50,000/- with one local surety in the like amount to the satisfaction of this Court; with the further condition that he shall either furnish Bank draft in favour of the complainant for an amount of Rs.1,60,000; or the bank guarantee to the extent of Rs.1,60,000; or the FDR to the extent of Rs.1,60,000. If the draft is furnished by him, it shall be retained on the Court file. In case appeal is ultimately accepted, the draft shall be returned to the appellant and if the appeal is dismissed, the draft shall be given to the respondent-complainant to be adjusted in the compensation amount. If the bank guarantee is furnished, the same shall be cancelled in case appeal is accepted;

whereas in case appeal is dismissed, the bank guarantee shall be utilized for making payment tot he complainant. Ordered accordingly.

The case had been adjourned to 1.5.2018 for furnishing bank guarantee/bank 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 Additional 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.

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 ₹1,60,000/- or the bank guarantee or FDR to that extent.

While passing the order, learned Additional 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.3,20,586/- and compensation awarded by trial Magistrate of Rs.3,20,586/-, the direction issued to the appellant to deposit ₹1,60,000/- 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 ₹1,60,000/- in form of bank draft or bank guarantee or FDR.

As regards the judgment passed in CRM-M-40279-2017 titled M/s Shree Conveyor System Pvt. Ltd. And another Versus M/s Shiv Shakti Steel, decided on 13.11.2017 by a Co-ordinate Bench of this Court, referred to by learned counsel for the petitioner, the same was given in light of the particular facts and circumstances of the 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.

The petition being without merit stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

15.5.2018
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No