

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

**CRM-M-21887-2018
Date of decision:-21.5.2018**

Sonu Ruhel

...Petitioner

Versus

Sushila Rani

...Respondent

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

Present : Mr.Prabhjeet Singh Sullar, Advocate
for the petitioner.

H.S. MADAAN, J.

The complainant Sushila had filed a complaint under Section 138 of Negotiable Instruments Act against Sonu Ruhel. Vide judgment dated 30.3.2018, Judicial Magistrate Ist Class, Faridabad while convicting the accused for the offence under Section 138 of NI Act sentenced him to undergo imprisonment for a period of six months and to pay compensation to the tune of Rs.22,50,000/-.

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 ₹15,00,000/-, although the learned trial Court has directed appellant to pay compensation amount of ₹22,50,000/-. 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 ₹7,50,000/-(i.e. Half of the cheque amount; or*
- b) The bank guarantee to the extent of ₹7,50,000/- or*
- c) FDR to the extent of ₹7,50,000/-,*

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 22.5.2018 for furnishing bank guarantee/draft/FDR.

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

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 judgments delivered by Co-ordinate Benches of this Court 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 and CRR No.1878 of 2015 titled *Kewal Singh Versus Ripandeep Singh*, decided on 29.6.2015.

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 ₹7,50,000/-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.15 lakhs and compensation awarded by trial Magistrate of Rs.22,50,000 lakhs, the direction issued to the appellant to deposit ₹7,50,000/- 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 ₹7,50,000/- 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.

The petition being without merit stands dismissed accordingly.

21.5.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No