IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.267

CRM-M-28655-2018 (O&M)
Date of decision : 02.11.2018

Indiabulls Housing Finance Limited ..... Petitioner

VERSUS

RHC Holding Private Limited and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. V.K. Sachdeva, Advocate and
Ms. Rubina Virmani, Advocate, for the petitioner.

Mr. J.S. Bedi, Sr. Advocate with
Mr. Lovekirat S. Chahal, Advocate,
for the respondents.

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SUDHIR MITTAL, J.

The petitioner is a finance company. It has disbursed a loan to respondent No.1. In discharge of its liability to repay the loan amount, a cheque dated 5.12.2017, amounting to Rs.2,91,55,500/- was issued by respondent No.1, but vide memo dated 27.12.2017, the same was dishonoured. A legal notice under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as 'the Act') was issued, but the cheque amount was not paid within the statutory period, leading to filing of a complaint under Section 138 of the Act. Vide summoning order dated 7.2.2018, the respondents were summoned for 27.4.2018. On this date, the respondents put in appearance through counsel and sought exemption from personal appearance on various grounds. Respondent Nos.2 and 5 sought exemption on the ground of ill-health of the mother of respondent No.2 and respondent Nos.3 and 4 sought exemption on the ground of their own ill-health. The matter was adjourned to 10.05.2018 on which date exemption was again sought on behalf of respondent Nos.2 to 5. Meanwhile, the petitioner filed an application dated 1.5.2018 for putting respondent Nos.2 to 5 to terms. It was prayed that the said respondents be directed to deposit their passports and not to leave the country without prior permission of the Court. Vide impugned order dated 29.5.2018, application dated 1.5.2018 filed on behalf of the petitioner was rejected.

2. Notice of motion was issued vide order dated 11.7.2018, after noticing that the respondents had taken a loan of Rs.481.56 crores and their cheques worth total of Rs.10.55 crores had been dishonoured, various complaints had been filed, but respondent Nos.2 to 5 failed to appear personally and seek bail; the petitioner therefore, apprehended that respondent Nos.2 to 5 might flee the country. On the next date of hearing i.e. 30.7.2018, the respondents put in appearance through counsel and sought time to file a reply. The case was adjourned to 31.8.2018 and interim directions were issued restraining respondent Nos.2 to 5 from travelling abroad without permission of the Court.

3. Thereafter, on 02.08.2018, a miscellaneous application for modification/rectification of order dated 30.7.2018 was filed on behalf of respondent Nos.2 to 5. It was stated therein that actual direction contained in order dated 30.7.2018 was that respondent Nos.2 to 5 would not travel abroad without 'informing' the Court, but by a clerical error, the order records that the said respondents would not travel abroad

without 'permission' of the Court. Since respondent Nos.4 and 5 were due to leave the country on 4.8.2018, an application dated 2.8.2018 was also filed before the trial Court for advancing the date of hearing. Another application of even date was filed for grant of bail and a third application of even date was filed for permission to travel abroad. Vide order dated 2.8.2018, the trial Court granted bail and permitted respondent Nos.4 and 5 to travel abroad. Meanwhile, the application for modification/rectification of order dated 30.7.2018, was taken up in this Court in the post lunch session and orally, it was conveyed to the parties that there is no clerical error in the order and that respondent Nos.2 to 5 were required to take 'permission from this Court'. Thus, application for modification/rectification was dismissed as not pressed. Thereafter, the petitioner filed an application for issuance of appropriate directions during the pendency of the present petition alleging that respondent Nos.2 to 5 were attempting to over-reach the Court. They were aware that this Court vide order dated 30.7.2018 had directed them not to travel abroad without the 'permission of this Court.' Yet, an application was filed before the trial Court seeking permission to travel abroad and a similar application was also filed before 'this Court' allegedly for modification/rectification and during the course of arguments in the said application, 'this Court' had specifically observed that permission of 'this Court' was required for travelling abroad. Moreover, even in the past, they had sought exemption from personal appearance without seeking bail on a number of occasions. Their act and conduct demonstrates that respondent Nos.2 to 5 consider themselves to be above the law and therefore, they should be put to adequate terms. A reply to this application has been filed, in which it is stated that there is no attempt to over-reach. Order dated 30.7.2018 mentions 'the Court' and therefore, in deference to that order, respondent Nos.4 and 5 moved an application before the trial Court seeking permission to travel abroad. It was only during the course of the arguments on 2.8.2018 that it transpired that permission had to be taken from 'this Court' for permission to travel abroad. By then, the application moved before the trial Court had already been allowed. The Code of Criminal Procedure, 1973, permits the Magistrate to grant exemption from personal appearance to an accused person and in exercise of the said power, the concerned Magistrate did grant exemption and therefore, it is wrong to suggest that respondent Nos.2 to 5 are taking the Courts for a ride. Before seeking permission to travel abroad, respondent Nos.4 and 5 sought bail and complied with the terms of the order granting bail. The actions of respondent Nos.2 to 5 have been within confines of law.

4. Learned senior counsel for the petitioner argues that respondents are indebted to the petitioner to the tune of Rs.746.14 crores. A number of cheques issued by them for repayment of loan have been dishonoured. The respondents owe a huge amount of Rs.10,100 crores approximately to various financial institutions/other entities and there are allegations of corporate fraud having been committed by the respondent Nos.2 to 5 leading to investigations by Securities and Exchange Board of India and the Serious Fraud Investigation Organization. Thus, they are likely to flee the country

without repaying public money taken by them as loans. Further, they have been seeking exemption from personal appearance as a matter of routine, even without taking bail on frivolous grounds. Their conduct shows their arrogant nature and their perception that they are above the law. Thus, even though, the offence under Section 138 of the Act, is bailable, respondent No.2 to 5 be directed to deposit their passports and seek permission of the Court before travelling abroad. The trial Court was in error in rejecting the application moved by the petitioner. Recent events in the country had shown that well connected and wealthy people flee the country without repaying the loans taken by them and it would be in the interest of the country at large, if appropriate conditions are imposed upon respondent Nos.2 to 5 restricting their movement. Reliance is placed upon a single bench judgment of this Court passed in **'CRM-M-45749-2018 (O&M) titled as Pritpal Singh Vs. State of Punjab and another decided on 13.2.2017'.**

5. Learned senior counsel appearing for the respondents submits that respondent Nos.2 to 5 respect the law of this Court and have not violated the same. Exemption from personal appearance was sought on account of inevitable circumstances and because the law permits the same. An offence under Section 138 of the Act, is bailable and by virtue of Section 436(1) Cr.P.C., an accused has a right to be granted bail subject to terms imposed by the Court/Arresting Officer. There is no sanction in law to imposition of conditions such as deposit of passports in bailable offences. Only if, an accused violates a term of the bail such as failure to appear on a date of hearing, in exercise of jurisdiction Section

436 (2) Cr.P.C., the Court may impose conditions. It is also argued that in exercise of jurisdiction under Section 482 Cr.P.C. this Court does not have the right to pass orders when there is a specific provision in the Code of Criminal Procedure, 1973, governing the relief sought. The present case is not one of money laundering. It is a simple cheque bounce case and the amount of default would not be a relevant consideration. The impugned order is legal and in accordance with law and it deserves to be upheld. Reliance is placed upon **'Vaman Narain Ghiya Vs. State of Rajasthan, 2009(1) RCR (Criminal) 473', 'State of Punjab Vs. Davinder Pal Singh Bhullar and others, 2012(1) RCR (Criminal) 126', 'State Rep. by D.S.P, S.B. C.I.D., Chennai Vs. K.V. Rajendran and others, 2008(4) RCR (Criminal), 278' and 'Satya Narayan Sharma Vs. State of Rajasthan, 2001(4) RCR (Criminal) 377.'**

6. Section 436 of the Code of Criminal Procedure, 1973 is reproduced below:-

> "436. In what cases bail to be taken.— (1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:
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> Provided that such officer or Court, if he or it thinks fit, [may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail] from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 [or section 446A].

[Explanation-where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person of the purposes of this proviso].

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446."

7. The language of the provision indicates that in a bailable offence, an accused person has a right to grant of bail provided said person is prepared to give bail subject to furnishing bonds with or without sureties for securing his appearance. However, if the accused fails to comply with the terms of the bail regarding time and place of attendance, the Court may refuse to release him on bail when he is next brought before it.

8. In **Vaman Narain Ghiya's case** (supra), it has been held as under:-

"17. Chapter XXXIII consists of Sections 436 to 450. Sections 436 and 437 provide for the granting of bail to accused persons before trial and conviction. For the purposes of bail, offences are classified into two categories, that is, (i) bailable, (ii) non-bailable. Section 436 provides for

> granting bail in bailable cases and Section 437 in non bailable cases. A person accused of a bailable offence is entitled to be released on bail pending his trial. In case of such offences, a police officer has no discretion to refuse bail if the accused is prepared to furnish surety. The Magistrate gets jurisdiction to grant bail during the course of investigation when the accused is produced before him. In bailable offence there is no question of discretion for granting bail. The only choice for the Court is as between taking a simple recognizance of the principal offender or demanding security with surety. Persons contemplated by this Section cannot be taken in custody unless they are unable or unwilling to offer bail or to execute personal bonds. The Court has no discretion, when granting bail under this section, even to impose any condition except the demanding of security with sureties."

9. In view of the unambiguous wording of Section 436 of the Code of Criminal Procedure, 1973, and its interpretation by the Supreme Court of India in **Vaman Narain Ghiya's case** (supra), there is no room for doubt that in a bailable offence an accused has an absolute right to bail provided he is willing to give bail. Terms as to bail bonds and sureties can be imposed by the Court, but no condition can be imposed as the same would amount to curtailing the statutory right under Section 436 Cr.P.C. The judgment of this Court in **Pritpal Singh's case** (supra), cannot apply to the facts of this case as in the said case the accused person did not appear before the trial Court on a particular date of hearing resulting in cancellation of his bail and surety bonds. Thereafter, when the accused person was brought before the Court while granting bail condition of deposit of passport was imposed.

10. Adverting to the next contention of learned senior counsel for the petitioner that considering the huge liability of the respondents, restrictions should be placed on their movements, I am of the view that allegations of serious fraud against respondent Nos.2 to 5 are still under investigation. Proceedings under the relevant law are being taken. In case the concerned authorities feel that restrictions should be placed on their movements, they would seek appropriate directions from the appropriate forum. I cannot rely on allegations made in other unrelated cases for the purposes of imposing conditions in this case. No law has been cited in this regard and therefore, I hold that allegations of fraud are not germane to this case.

11. The contention of learned senior counsel for the petitioner that a large amount of public money is owed by the respondents and that this should be a relevant consideration while granting bail, also cannot be accepted. The amount of default does not make a bailable offence non-bailable. The principles governing grant of bail will not change depending upon the cheque amount. The argument is not supported either by the language of the statute or by any other legal principle and accordingly, is rejected.

12. Learned senior counsel for the respondents has placed strong reliance upon the principle that jurisdiction under Section 482 Cr.P.C. cannot be used to pass orders, where a specific provision exists governing the relief sought. His submission is that inherent power cannot be invoked to by-pass inbuilt bar in Section 436(1) Cr.P.C. against imposition of conditions while granting bail in bailable offence. The

contention of learned senior counsel is sound and is based upon legal principle. The contention is also supported by judgments cited by him i.e. **'Davinder Pal Singh Bhullar (supra), K.V Rajendran (supra) and Satya Narayana Sharma (supra).** However, the question is whether this proposition is applies to the facts and circumstances of this case ? In my opinion, it does not. The petitioner had filed an application for directions to respondent Nos. 2 to 5 to deposit their passports and not to travel abroad without permission of the Court. This application does not mention any provision of law under which the same was filed and is thus, relatable to Section 436 Cr.P.C. The application having been rejected vide impugned order, the present petition under Section 482 Cr.P.C. has been filed challenging the same. Thus, it cannot be said that the inherent jurisdiction is being invoked for the purpose of by-passing Section 436 Cr.P.C. An order passed by the trial Court is amenable to challenge under Section 482 Cr.P.C. and under the facts and circumstances of this case, the argument of learned senior counsel for the respondents is rejected.

13. Finally, the parties have joined issue on whether the conduct of respondent Nos.2 to 5 deserves to be deprecated. The offence is bailable undoubtedly, but to my mind, even in a bailable offence, on being summoned, the accused must immediately put in appearance and seek bail. Only thereafter, they may seek exemption from personal appearance in case the circumstances so warrant. However, in the present case, respondent Nos.2 to 5 appeared to seek bail only when they had to travel abroad. The trial Court continued to grant them exemption from personal appearance, even though, the said exemption was sought on

specious grounds such as ill-health of mother/mother-in-law. The trial Courts must not feel over-awed by the financial status of a party and must act in accordance with law un-fazed by the status of a party before it. The Courts would do well to ensure that the letter and spirit of law is obeyed under all circumstances.

14. So far as the allegations of the petitioner regarding, the attempt by respondent Nos.4 and 5 to over-reach the Court by approaching the trial Court on 2.8.2018 and not bringing this fact to the notice of this Court while seeking modification/rectification of order dated 30.7.2018, suffice to say that I am satisfied with the explanation given by the respondents. No further orders are necessary under the circumstances.

15. The petition is accordingly dismissed. The miscellaneous applications stand disposed of and the interim orders passed stand merged with the final judgment. It is, however, directed that whenever respondent Nos.2 to 5 have to travel abroad, they shall inform the trial Court regarding the dates of their travel, the purpose of the travel and the destination.

(SUDHIR MITTAL)
JUDGE

02.11.2018
Ramandeep Singh

Whether speaking / reasoned Yes / No

Whether Reportable Yes/ No