

259 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32629-2018 (O&M)

Date of decision:17.09.2018

Manju Tanwar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Surender Singh, AAG, Haryana
for respondent No.1-State.

RAJBIR SEHRAWAT, J. (ORAL)

Prayer in this petition, filed under Section 482 of Cr.P.C. is for quashing of the impugned order dated 16.03.2018 (Annexure P-4), passed in CRA No. 244 dated 19.05.2017, whereby, while granting bail to the petitioner, the lower Appellate Court also required the petitioner to deposit the remaining amount of cheque involved in the case; for dishonouring of which the petitioner has been convicted.

Counsel for the petitioner submits that while filing application for suspension of sentence, the petitioner had already deposited a sum of ₹2,00,000/- with the Court and the same was handed over to the complainant. The total amount of the cheque, for dishonouring of which, the petitioner has been convicted, is ₹6,81,779/-. Vide the above said order, although the lower Appellate Court accepted the bail bonds of the petitioner and released her on bail, however, the condition was also imposed that the case was being adjourned for making remaining payment of the cheque amount by the petitioner.

Counsel for the petitioner further points out that, thereafter, the case was adjourned to 28.05.2018 and then the case was again adjourned to 21.07.2018 for making payment of the remaining amount. However, counsel for the petitioner has contended that warrants of arrest have been issued by cancelling the bail granted to the petitioner and then the case was fixed for 18.09.2018. It is contended by counsel for the petitioner; that the insistence of the Court below for paying remaining amount of cheque is totally impermissible. Since the petitioner is in the first appeal before the Court, therefore, she cannot be forced to deposit the entire amount of the cheque by the lower Appellate Court. Although, the Court can ask to deposit some amount for granting concession of suspension of sentence to the petitioner, however, that amount should not be unreasonable and in any case, it cannot be the total amount of the cheque involved in the case.

On the other hand, learned State counsel, submits that since the petitioner has been convicted, therefore, the Court is within its power to ask the petitioner to deposit the amount of the cheque for granting her suspension of sentence. It is further contended that the amount of ₹6,81,779/- is the total amount of compensation awarded by the trial Court. Therefore, the lower Appellate Court has imposed the condition of the deposit of same amount as a condition for releasing the petitioner on bail.

Having heard learned counsel for the parties, this Court find substance in the arguments of the learned counsel for the petitioner.

The Hon'ble Supreme Court has already held in 2007(2) R.C.R. (Criminal) 636, Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and another, that the lower Appellate Court can ask the appellant to deposit some amount as the pre-condition for granting him the concession of suspension of sentence in case of offence under Section 138 of the Negotiable Instruments

Act. The relevant para of the above said judgment is reproduced as under:-

*“ We are of the opinion that having regard to the
aforementioned factors the amount of compensation not only
must be reasonable one, the conditions for suspending the
sentence should also be reasonable. It is only with that intent to
view, the doctrine of purposive construction should be applied.”*

After a person is convicted for an offence involving payment of money or inviting grant of compensation in favour of the complaint, then in appeal the appellate Court can impose a pre-condition of payment of some amount; for suspending the sentence of the convict/appellant. However, such amount cannot be unreasonably high, so as to defeat the very purpose of appeal and the right of the convict to avail the benefit of suspension of sentence. Therefore, whereas the Court can impose a condition qua deposit of the amount while granting benefit of suspension of sentence, but the amount required to be deposited cannot be prohibitive to such an extent that it renders the appeal itself as almost infructuous; by making the appellant to pay the entire amount to the complainant.

A perusal of the order passed by the Lower Appellate Court also shows that vide order dated 19.05.2017, the petitioner was required to deposit only an amount of ₹2,00,000/- within 10 days to ensure that she gets suspension of sentence. Therefore, a pre-emptory order was passed granting her suspension of sentence and releasing her on bail with a direction to deposit ₹2,00,000/- within a period of 10 days, failing which, the suspension of sentence was ordered to be recalled.

On 16.03.2018, the parties had made statement that ₹2,00,000/- stood paid to the complainant. In view of this situation, there was no reason or occasion for the lower Appellate Court, to further add condition for deposit; by the petitioner; of the remaining amount also, while passing order dated

16.03.2018. This condition negates the right of the appellant to seek suspension of sentence itself.

In view of the above, finding the requirement of depositing the remaining amount of the cheque, being insisted by the lower Appellate Court, to be unreasonable and legally unsustainable, the same is set aside. The petitioner would not be required to deposit any more amount for maintaining her suspension of sentence; already granted to her by the Lower Appellate Court. It is further directed that the lower Appellate Court shall decide the appeal itself, finally within a period of three months from the date of receipt of certified copy of this order.

Disposed of.

(RAJBIR SEHRAWAT)
JUDGE

17.09.2018
Hemlata

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No