

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision-17.04.2018

1. CRM-M No.36214 of 2017

Sushil Mehta ... Petitioner

Versus

State of Haryana ... Respondent

2. CRM-M No.31285 of 2017

Randeep Singh ... Petitioner

Versus

State of Haryana ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikram Singh, Advocate
for the petitioner in CRM-M No.36214 of 2017.

Mr. K.D.S. Hooda, Advocate
for the petitioner in CRM-M No.31285 of 2017.

Ms. Neelam Kashyap, DAG, Haryana.

Mr. Naveen Chopra, Advocate
for the complainant in CRM-M No.31285 of 2017.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CRM-M No.36214 of 2017 titled Sushil Mehta Vs. State of Haryana and CRM-M No.31285 of 2017 titled Randeep Singh Vs. State of Haryana are being disposed of. Facts are being culled out from CRM-M No.36214 of 2017.

[2]. Petitioner(s) seek grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.337 dated 18.04.2017 registered under Sections 406, 420,506, 120-B IPC at Police Station Sadar Karnal, District Karnal.

[3]. As per allegations in the FIR, the complainant alleged that complainant party had purchased three room set flat i.e. T.C. 774, Second Floor, Chandigarh City 45 Karnal from APL Group of Company, Karnal through Randeep Singh. Complainant paid Rs.10,20,000/- in cash in three installments and Rs.4,30,000/- as premium. The owners of the company namely Sushil Mehta and Gulshan Chawla had given them one and half years time for completing the flat, but even expiry of one and half years, the complainant could not find any flat, nor any land was in their name. The allegations of fraud and cheating were made against Sushil Mehta, Gulshan Chawla and Randeep Singh. In the panchayat, Randeep Singh undertook to return the amount of Rs.15,00,000/- within four months, but he refused to pay the same after expiry of four months. Thereafter, he started exercising police influence of his brother in not making the payment.

[4]. Learned counsel for the petitioner(s) submitted that for the amount in question cheques were given in the compromise effected between the parties prior to lodging of the FIR. The cheques were dishonoured and complaints under Section 138 of the Negotiable Instruments Act were filed by the complainant on 07.09.2016 in respect of those cheques and even the accused were summoned by the Sub Divisional Judicial Magistrate, Assandh for the offence under Section 138 of the Negotiable Instruments Act vide order dated 07.09.2016. Complainant has

already availed the legal remedy under Section 138 of the Negotiable Instruments Act i.e. under specific statute.

[5]. Learned counsel for the petitioner Sushil Mehta submitted that ingredients of cheating are not attracted as the petitioner along with others has flouted a housing scheme in which complainant has invested the money. At the most, the dispute is having civil profile and initiation of parallel proceedings to the complaint under Section 138 of the Negotiable Instruments Act is wholly illegal.

[6]. Learned counsel for the petitioner Randeep Singh submitted that initially a complaint was made to S.S.P, Karnal on 05.09.2016. Thereafter, a compromise was effected in the panchayat, wherein cheques were issued by Sushil Mehta in favour of the complainant. On being presented, the cheques were dishonoured and complaints under Section 138 of the Negotiable Instruments Act were filed by the complainant in the Court of Judicial Magistrate, First Class, Assandh. Even in the proceedings under Section 138 of the Negotiable Instruments Act, parties made statements before the Court that matter has been compromised and an amount of Rs.5,00,000/- will be paid on or before 08.05.2018. If the accused fails to make payment as per compromise, he will be liable for the conviction and to pay cheque amount. Complainant also got his statement recorded acknowledging the statement of the accused. The matter was

taken up in the Lok Adalat, wherein it was noticed that complainant is only concerned about his payment and he will be satisfied if the same is made by the accused as undertaken by accused Sushil Mehta in the Court. The award was passed and accused Sushil Mehta was directed to make payment as per his statement. The complainant was also bound by his statement.

[7]. The award was passed by Judicial Magistrate First Class-Presiding Officer, Daily Lok Adalat only against Sushil Mehta vide order dated 08.11.2017. The statement of the complainant was to the effect that Sushil Mehta has admitted his liability to pay the cheque amount of Rs.5 lacs and complainant did not wish to carry on with the petitioner and also deleted the name of co-accused Gulshan Chawla from the array of accused. Complainant further submitted that in view of statement got recorded by Sushil Mehta, award be passed. On the basis of consensus between the parties, the award dated 08.11.2017 was passed by the Court in the context of fastening liability of Rs.5,00,000/- on Sushil Mehta.

[8]. During course of proceedings before the High Court, Co-ordinate Bench was pleased to pass the following order on 16.11.2017:-

“Learned counsel for the petitioner-Sushil Mehta makes a statement that the petitioner is interested in resolving the case-FIR filed against him.

Learned counsel for the complainant opposed the plea on the ground that there are large numbers of cases against the petitioner-Sushil Mehta.

Learned counsel for the petitioner-Sushil Mehta has shown me the orders made by the learned Judicial Magistrate 1st Class, Assandh in the complaints under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act').

The order shows that the petitioner-Sushil Mehta has agreed to make payment of the amount within a period of 6 months. Learned JMIC has accordingly, disposed of those complaints.

Learned counsel for the complainant submits that said orders of disposal of complaints under Section 138 of NI Act have been put to challenge in the revision by the complainant.

Statement is recorded.

Prima-facie, in my opinion, the procedure adopted by the learned JMIC, Assandh is absolutely wrong in that the amount that is to be paid was required to be deposited first with the Court or paid to the complainant. The said orders result into multiplicity of litigation, which should always be avoided. This Court has made such observations in one of the case asking the copies to be served to all the Courts below. The reason is that the Court orders cannot depend on contingency. Be that as it may, in the present case, learned counsel for the petitioner-Sushil Mehta has made a categorical statement that if the petitioner-Sushil Mehta is allowed to be on ad interim bail for a period of one month, he would complete the promise to make the entire payments to the complainant in the present case.

I think since there is offer by the petitioner-Sushil Mehta to that effect and ultimate object is to recover money from him, he should be granted ad interim bail. Looking to the fact that the complaints under Section 138 of NI Act have been disposed of rightly or wrongly, the petitioner-Sushil Mehta is ordered to be released on interim bail for a period of one month only from the date of his actual release from the jail, to make necessary arrangements as aforestated, to the satisfaction of the trial

Court. The entire amount shall be deposited in this Court. The petitioner-Sushil Mehta shall attend the concerned police station on Monday, Wednesday and Sunday between 11:00 AM to 12:00 PM every week and the police concerned shall keep surveillance on him. Petitioner-Sushil Mehta shall deposit his passport, if possess, with the Illaqa Magistrate concerned.

Petitioner-Sushil Mehta shall surrender to the jail exactly after one month from the date of his actual release. The petition is thus, kept pending after one month for further consideration.

In so far as the petitioner-Randeep Singh is concerned, his petition obviously will also have to be adjourned in view of the above order again for a period of one month.

In that view of the matter, these petitions are fixed for 18.12.2017 for further consideration.

A photocopy of this order be placed on the another connected case file.”

[9]. Perusal of the aforesaid order would show that ad interim bail was granted to Sushil Mehta for a period of one month in order to enable him to make necessary arrangements for making payment to the complainant. Thereafter, interim bail was extended on the ground that Sushil Mehta could not come out of the jail and could not fulfill the condition as undertaken by him. Interim bail was also granted to Randeep Singh vide order dated 28.02.2018 passed by this Court. As on date, Sushil Mehta and Randeep Singh are on interim bail. Learned counsel for the petitioner Sushil Mehta submitted that Sushil Mehta could not come out of jail being involved in other cases and is still ready and willing to perform his part of obligation arising out of order dated 16.11.2017. In the aforesaid order, it was noticed that there

was an offer made by the petitioner Sushil Mehta to satisfy the claim of the complainant in the proceedings under Section 138 of the Negotiable Instruments Act also and the complainant specifically got deleted the name of Gushan Chawla from the array of accused. Randeep Singh was never made an accused in those proceedings.

[10]. In view of facts on record, the complicity of the petitioner Randeep Singh in the FIR case would be debatable as to the maintainability of the FIR in view of invoking provisions of special statute under Section 138 of the Negotiable Instruments Act.

[11]. At this stage, without embarking anything upon merits of the case, both the petitions are allowed. Interim bail granted to the petitioner Randeep Singh vide order dated 28.02.2018 is hereby confirmed subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court. So far as Sushil Mehta is concerned, he has already undertaken to make good the due payment to the complainant as per compromise before the Lok Adalat dated 08.11.2017. It would be in all fairness to provide one last opportunity to accused Sushil Mehta to fulfill his promise arising out of decision dated 08.11.2017 passed by the Judicial Magistrate First Class-Presiding Officer, Daily Lok Adalat, Assandh and order dated 16.11.2017 passed by the High Court. As a last resort, time is given to accused Sushil Mehta

upto 07.05.2018 to satisfy the entire claim of the complainant irrespective of his hardship, if any. Since reasonable time has already been granted to Sushil Mehta, therefore, I deem it appropriate to give last chance to Sushil Mehta to make good the payment of requisite amount to the complainant, failing which, CRM-M No.36214 of 2017 would be deemed to be dismissed without making any further reference to the Court.

[12]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

17.04.2018

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No