

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

CRM-M-46191 of 2018 (O&M)

Decided on:-October 17, 2018.

Shilpa Gill.

.....Petitioner.

Versus

State of Haryana and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Pardeep Khadka, Advocate
for the petitioner.

HARI PAL VERMA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of the order dated 01.10.2018 (Annexure P-1) passed by learned Sub-Divisional Judicial Magistrate, Bilaspur, District Yamuna Nagar in Execution Petition No.CRM-5-2017 filed by respondent No.2 titled as ***Khem Chand Versus Shilpa Gill*** and all subsequent proceedings thereof.

Briefly stated, respondent No.2 Khem Chand had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) against the petitioner-accused, alleging therein that the cheque No.101175 dated 02.02.2016 for an amount of Rs.3,80,000/- issued by the petitioner in discharge of his existing liability in favour of the complainant was dishonoured vide bank memo dated 06.02.2016. The respondent No.2-complainant through his counsel issued a legal notice dated 04.03.2016 to the

petitioner-accused, but the petitioner did not make the payment. Thus, a complaint under Section 138 of the Act was filed by respondent No.2 on 30.03.2016 against the petitioner-accused.

However, in order to get rid of the litigation and to maintain cordial relations with the complainant, the petitioner-accused compromised the matter with the respondent No.2 in Daily Lok Adalat on 20.12.2016. The petitioner had acknowledged her liability to pay an amount of Rs.3,10,000/- to the complainant and in this manner, the matter was settled between the parties.

The Daily Lok Adalat passed the award dated 20.12.2016 to the effect that the petitioner-accused shall make the payment to the complainant in view of the settlement arrived between the parties. However, the Lok Adalat made it clear that if petitioner-accused fails to make the payment in terms of the settlement so arrived between the parties, the complainant would be at liberty to file the execution petition qua the payment undertaken by the petitioner before the competent civil Court. Further, it was made clear that in case the payment is not made by the accused within the time so undertaken and in case the complainant is constrained to initiate proceedings against the accused in execution petition, 10% of the cheque amount will be recovered from the accused as costs to be paid/deposited with the Sub-Divisional Legal Services Committee (SDLSC), Bilaspur.

Since the petitioner-accused neither appeared before the Daily Lok Adalat nor made the payment, vide impugned order dated 01.10.2018, the executing Court has issued conditional warrant of arrest against the

petitioner for the payment of Rs.2,45,000/- with a rider that in case she makes the payment of the said amount, she may not be arrested, otherwise she be arrested and produced before the Court.

Learned counsel for the petitioner has argued that as the financial condition of the petitioner has not improved and rather become worse, the petitioner could not deposit the agreed amount. But the executing Court has acted in an arbitrary manner and the case was being adjourned with short dates. The executing Court has not appreciated the fact that the petitioner was not in a position to make payment because of her ill health. Moreover, the Aactiva scooter of the petitioner has been taken into custody by the executing Court and the impugned order has been passed without considering the medical health condition of the petitioner.

Having heard learned counsel for the petitioner and perusing the paper book, this Court finds that there is no dispute that the matter was settled between the parties before Daily Lok Adalat on 20.12.2016. The petitioner had furnished an undertaking to pay a total amount of Rs.3,10,000/- i.e. Rs.1,00,000/- on 25.01.2017 and the remaining amount in the instalments of Rs.22,000/- per month, but she has not honoured the aforesaid schedule of payment. Even the Lok Adalat has granted liberty to the complainant to file execution qua the payment undertaken by the petitioner-accused and it is as a consequence thereof, the respondent No.2-complainant has filed an execution application. The impugned order dated 01.10.2018 passed by the executing Court reads as under:

“Today the case was fixed for presence of JD/accused.

Payment of compromise amount not paid, nor JD/accused

appeared before the court. Let conditional warrant against JD/accused for the amount of Rs.2,45,000/- be issued for 20.10.2018 with a direction if she makes the payment of above said amount, then she may not be arrested otherwise she be arrested and produced before the court on the date fixed. Till then, the active shall remain in custody of bailiff of this court.”

Perusal of the aforesaid order reveals that the executing Court has still shown generosity by affording further opportunity to the petitioner and has issued conditional warrant of arrest with a direction that in case she makes the payment, then she may not be arrested. However, the amount of Rs.2,45,000/- is outstanding against the petitioner and despite there being an undertaking given by her before Daily Lok Adalat, the said amount has not been paid by her. Therefore, this Court does not find any reason to interfere with the impugned order dated 01.10.2018 passed by the executing Court.

The present petition, being devoid of any merit, is accordingly, dismissed.

October 17, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No