

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

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CRM-M-17288-2018 (O & M)
Date of Decision:25.07.2019

Ashish Jain

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Naveen Sharma, Advocate
for the petitioner.

Mr. Hittan Nehra, Addl. A.G., Punjab.

Ms. Harmeet Kaur, Advocate
for respondent No.2.

MANOJ BAJAJ, J.(ORAL)

Convict-Ashish Jain has filed this petition under Section 482 Cr.P.C. for challenging the order dated 09.04.2018 (Annexure P-3), whereby the Appellate Court while suspending the sentence of the convict (petitioner) directed him to furnish the Bank guarantee of ₹5,36,149/- i.e. the cheque amount.

Learned counsel for the petitioner contends that the appeal was filed against the judgment of conviction and order of sentence in a case under Section 138 of the Negotiable Instruments Act, 1881 and the prayer for suspension of sentence was made along with the grounds of appeal.

A perusal of the grounds of appeal indicates that the sentence along with compensation of ₹5,36,149/- as awarded by the trial Court was also under challenge.

Learned counsel for respondent No.2 prays for time to file reply. However, this Court had granted time on 21.08.2018 to the learned counsel and it's nearly one year and no reply has been filed.

The Appellate Court after receiving the case entertained the appeal as it involved arguable points. However, without their being any objection on behalf of the complainant, the Court suo motu proceeded to impose this condition which amounts to implementing the sentence as awarded by the trial Court which was under challenge. Apparently, the Court of appeal fell into in error of law by imposing such a condition without even discussing the facts of the case, much less giving any reasons for directing the appellant to deposit the entire amount of compensation as awarded by the trial Court. The approach adopted by the Appellate Court is against the decision of Hon'ble Supreme Court in the case of Dilip S. Dahanukar versus Kotak Mahindra Co. Ltd. and another, (2007) 6 SCC 528.

Resultantly, the petition is allowed and the impugned order is set aside only to the limited extent whereby Appellate Court had directed the petitioner to furnish Bank guarantee.

Further the Appellate Court is directed to adjudicate the appeal on merits.

25.07.2019
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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No