

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

257-8 cases		
(1)	CRM-M-17669-2018 (O & M)	Date of Decision:25.07.2019
M/s BOP Pvt. Ltd. and others	...Petitioners	
	Versus	
Leena Jerath	...Respondent	
(2)	CRM-M-17670-2018 (O & M)	Date of Decision:25.07.2019
M/s BOP Pvt. Ltd. and others	...Petitioners	
	Versus	
Ravi Parkash Jerath and another	...Respondents	
(3)	CRM-M-17671-2018 (O & M)	Date of Decision:25.07.2019
M/s BOP Pvt. Ltd. and others	...Petitioners	
	Versus	
Leena Jerath and another	...Respondents	
(4)	CRM-M-17672-2018 (O & M)	Date of Decision:25.07.2019
M/s BOP Pvt. Ltd. and others	...Petitioners	
	Versus	
Deepa Jerath and another	...Respondents	
(5)	CRM-M-17673-2018 (O & M)	Date of Decision:25.07.2019
M/s BOP Pvt. Ltd. and another	...Petitioners	
	Versus	
Arpit Jerath and another	...Respondents	

(6)

**CRM-M-17674-2018 (O & M)
Date of Decision:25.07.2019**

M/s BOP Pvt. Ltd. and others

...Petitioners

Versus

Ravi Parkash and another

...Respondents

(7)

**CRM-M-17675-2018 (O & M)
Date of Decision:25.07.2019**

M/s BOP Pvt. Ltd. and others

...Petitioners

Versus

Ravi Parkash Jerath and another

...Respondents

(8)

**CRM-M-17681-2018 (O & M)
Date of Decision:25.07.2019**

M/s BOP Pvt. Ltd. and another

...Petitioners

Versus

Deepa Jerath and another

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. M.K. Garg, Advocate
for the petitioner(s).

Mr. Pawan Kumar Mutneja, Advocate
for the respondent(s).

MANOJ BAJAJ, J.

By this common order, the above mentioned eight petitions are being decided, wherein challenge is laid to similar order(s) dated 11.04.2018 (Annexure P-3) passed by Appellate Court whereby condition(s)

was imposed for depositing the compensation amount while suspending the

sentence of convicts under Section 389 Cr.P.C. in criminal appeal(s) against conviction preferred by the petitioner(s) arising from criminal complaint(s) under Section 138 Negotiable Instruments Act, 1881 ('Act' - for short).

The facts in brief are being extracted from CRM-M-17669-2018 and are noticed here below.

Respondent(s) brought criminal complaint(s) under Sections 138, 141 and 142 Negotiable Instruments Act, 1881 against the petitioners (accused Nos.1 to 4) and M/s Baya Weavers Limited (accused No.5) on the ground that accused had advertised themselves as reputed builders and invited applications by way of pre-launching the residential group housing project at DLF Garden City situated at NH-24B Raibareilly Road, Village Purseni, Tehsil Mohna Lalganj, Lucknow. Accused No.5 - M/s Baya Weaver Limited entered into an collaboration agreement with petitioner No.1-Company for construction work.

Pursuant to the alleged inducement, the complainant got booked one 3BHK apartment and had paid an amount of ₹20 lacs through cheque No.552825 dated 21.07.2014. The amount was received by accused No.5. In furtherance to the booking, mutual agreement dated 23.08.2014 was executed between the respondent and accused No.5 in respect of the said investment plan namely "Buy Back Special Plan". As per this plan, it was settled that after a fixed period of 12 months, accused No.1-Company will take over the said residential unit and make the payment @ ₹3674/- per square feet in the proportion of the amount paid by the complainant. In respect of this transaction, a post dated cheque bearing No.663552 dated 23.07.2015 for an amount of ₹26,31,500/- drawn at Indian Bank, Greater

Noida Branch, Noida, UP in favour of the complainant was delivered by petitioner No.1-Company. The said cheque upon presentation was dishonored on 18.08.2015 with the remarks "account closed". The complainant proceeded to issue the statutory legal notice dated 16.09.2015, thereby calling the accused persons to make the payment within a period of 15 days, however, as the same was not made, therefore, the complainant filed the complaint as mentioned above.

The trial Court after examining the pre-summoning evidence, summoned the accused persons (petitioners) under Section 138 of the Act and after their appearance the trial commenced, which ended in conviction on 12.03.2018. On the same date, the trial Court passed the order on sentence whereby the accused were sentenced to undergo simple imprisonment for a period of 6 months for the offence punishable under Section 138 of Act. Further the convicts were directed to pay compensation to the tune of ₹39,47,250/- i.e. one and half times of the cheque amount. It was further ordered that in case the compensation is not paid in time, the same shall be recoverable under the provisions of Sections 421 and 431 Code of Criminal Procedure. Lastly, it was clarified that the amount, if any, already paid by the convicts to the complainant during the trial of the present case be set off from the amount of compensation.

Dissatisfied with the judgment of conviction and order of sentence, the petitioners jointly filed criminal appeal(s) along with application(s) under Section 389 Cr.P.C. seeking suspension of sentence during the pendency of appeal. The Appellate Court vide its order dated 11.04.2018 suspended the sentence of the petitioners subject to the

condition that a Bank draft for a sum of ₹13,15,000/- (i.e. approximately half of the cheque amount) or alternatively the bank guarantee to the extent of ₹13,15,000/-; or FDR of the same amount in favour of the complainant be furnished within 15 days. It was further ordered that in case the amount is furnished by the convicts, it shall be retained in the Court file. The challenge in these petitions is laid to the said condition only.

Learned counsel for the parties have been heard and with their assistance, I have gone through with the case files.

Learned counsel for the petitioners has contended that the appeal carries substantial issues of law and the validity and correctness of the judgment of conviction and order of sentence is yet to be ascertained by the Appellate Court and, therefore, the imposition of impugned conditions while suspending the sentence of the petitioners was not only harsh, but against the law as well. According to him, the amount in question was paid by the complainant to accused No.5 namely M/s Baya Weaver Limited and therefore, it would be seriously debatable as to whether the cheque issued by the petitioner-Company was towards discharge of the liability, or towards payment of legally enforceable debt.

Learned counsel for the petitioners has submitted that the impugned condition would render the appeal infructuous, as the petitioners are not in a position to make the payment. He submits that the financial capability of the petitioners was assessed by this Court, which was noticed in the order dated 04.05.2018, whereby it was observed that Company was running into losses. He submits that the impugned sentence of compensation would otherwise be enforceable under Section 421 Cr.P.C. in case the

appeal fails.

On the other hand, learned counsel for the complainant/respondent(s) has vehemently opposed the prayer made in these petitions. He submits that the order passed by the Appellate Court is justified considering the aims and objects of the Negotiable Instruments Act, 1881. According to him, the trial Court had passed the sentence considering the facts and circumstances of the case and awarded compensation to the respondent/complainant. He has invited the attention of the Court to the observations of the Hon'ble Supreme Court in the case of **Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. and another** (2007) 6 SCC 528, wherein it was held that the Appellate Court while suspending the sentence was competent to put the appellant on terms. He contends that the Appellate Court has relied upon this judgment and the condition was rightly imposed.

A perusal of the impugned order reveals that the Appellate Court while deciding the applications for suspension of sentence has not at all touched the background of the case muchless the facts and the observations of the trial Court. The Appellate Court has decided the applications for suspension of sentence and thereafter admitted the appeal for hearing. The order of sentence passed by the trial Court had clarified that the compensation amount if not paid in time shall be recoverable under Sections 421/431 Cr.P.C.; besides it was observed that the amount if any already paid by the convicts to the complainant during the trial of the case be set off from the amount of compensation. Therefore, the impugned compensation part awarded by trial Court was not absolute and was

conditional. The Appellate Court failed to examine this crucial part of the order of sentence imposed by the trial Court and proceeded to implement it with slight modification.

At this stage, it is useful to extract the observations of the Hon'ble Supreme Court in the cited case, wherein it was held that the grant of compensation must be considered keeping in mind the relevant factors and the compensation should not be awarded arbitrarily, the same reads as under:-

“38. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub- Section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction

cannot be exercised at the whims and caprice of a judge.

39. If a fine is to be imposed under the Act, the amount of which in the opinion of the Parliament would be more than sufficient to compensate the complainant; can it be said, that an unreasonable amount should be directed to be paid by the Court while exercising its power under sub-Section (3) of Section 357? The answer thereto must be rendered in the negative. Sub- Section (5) of Section 357 also provides for some guidelines. Ordinarily, it should be lesser than the amount which can be granted by a Civil Court upon appreciation of the evidence brought before it for losses which might have reasonably been suffered by the plaintiff. Jurisdiction of the Civil Court, in this behalf, for realization of the amount in question must also be borne in mind. A criminal case is not a substitution for a civil suit, far less execution of a decree which may be passed.”

In the above case, the Supreme Court had altered the similar order passed in appeal against conviction, and proceeded to direct the appellant-convict to deposit a sum of ₹1 lac instead of ₹5 lacs as ordered by the Appellate Court.

As noticed above, in the present case, the financial condition of the convicts is not sound, who suffered losses, therefore, this Court finds that the imposition of condition of deposit of compensation or part of it for suspension of sentence or adjudication of the appeal on merits is not

justified.

Learned counsel for the respondent(s) has vehemently contended that in case the petitioner(s) is unable to make the payment then he has to undergo his sentence of imprisonment. The submission is without any merit because if a convict is ordered to serve the sentence during the pendency of the appeal, his fundamental right guaranteed under Article 21 of the Constitution of India would stand defeated.

Learned counsel for the respondent(s) failed to controvert the financial status of the convict. Apart from it even the impugned order(s) does not reveal any direction regarding deposit or disbursement of the amount in favour of the complainant, as the Appellate Court had ordered that the amount if deposited be kept with the Court, which shall be paid to the concerned party after the adjudication of the appeal(s).

It may be noticed here again that the amount of compensation as awarded by the trial Court can be recovered by pursuing it in view of the provisions of Sections 421/431 Cr.P.C., therefore, without hesitation it is held that the impugned condition imposed by the Appellate Court is not sustainable.

Resultantly, the petitions are allowed and the impugned condition(s) in the order dated 11.04.2018 is set aside. Rest of the order shall remain intact.

25.07.2019

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(MANOJ BAJAJ)
JUDGE

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