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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22839-2018

Date of Decision : February 13, 2019

Nitin Shashwat and another

.... Petitioners

Versus

M/s Ajanta Timbers and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Sandeep Vermani, Advocate,
for the petitioner.

Mr. Vaibhav Goel, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) is for quashing order dated 21.02.2018 passed by learned Additional Sessions Judge, Faridabad to the extent of imposing condition of directing the petitioner to submit a bank guarantee to the extent of Rs.3,00,000/- while deciding the application under Section 389(2) Cr.P.C. filed by the petitioner for suspension of sentence awarded by the trial Court.

2. Learned counsel for the petitioners contended that petitioner No. 1 was convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") and was sentenced to undergo Simple

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Imprisonment for a period of three months and to pay compensation of Rs.10,50,000/- as cheques amounting to Rs.7,00,875/- were allegedly dishonoured. Thereafter, the petitioners filed first appeal before learned Additional Sessions Judge, Faridabad together with an application seeking suspension of sentence of petitioner No.1.

3. Learned counsel for the petitioners further contended that vide order dated 21.02.2018 while ordering suspension of sentence of petitioner No.1, learned first Appellate Court imposed a condition regarding furnishing of bank guarantee to the extent of Rs.3,00,000/- and to furnish bail bond/surety bond in a sum of Rs.1,00,000/- with one surety in the like amount. The condition is totally unreasonable as the petitioner is unable to furnish the bank guarantee of Rs.3,00,000/- and the said condition is liable to be struck down.

4. In support of his argument, learned counsel for the petitioners placed reliance upon judgment of Co-ordinate Bench of this Court in **Arvind and another Vs. Joginder Singh Bedi, CRM-M-37682-2017,** decided on 01.12.2017.

5. While arguing on this point, learned counsel representing the respondents contended that learned Additional Sessions Judge has taken the most reasonable view because against amount of compensation of Rs.10,50,000/- awarded by the trial Court, the petitioner has been asked to furnish bank guarantee of Rs.3,00,000/- only. He further contended that the first Appellate Court while suspending the sentence of the petitioner under Section 389(2) Cr.P.C. is well within its power to impose such reasonable condition and in this case, a very fair and reasonable condition has been imposed. There is no ground to accept the present revision

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petition and the same be dismissed.

6. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that in this case, the total compensation awarded by learned trial Court is Rs.10,50,000/- and to take a reasonable view so as to consider the interest and rights of the present petitioner as well as of the respondents, the Court has taken the most reasonable view while imposing such a condition, which the Appellate Court is certainly empowered to do so.

7. Similar matter was before Hon`ble Apex Court in **Dilip S. Dahanukar Vs. Kotak Mohindra Co. Ltd. and Ors, 2007 (2) R.C.R. (Criminal) 636**, wherein Hon`ble Apex Court observed as under:-

“72. We, therefore, are of the opinion:

- i) In a case of this nature, Sub-section (2) of Section 357 of the Code of Criminal Procedure would be attracted even when Appellant was directed to pay compensation;
- ii) The Appellate Court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;
- iii) The amount of compensation must be a reasonable sum;
- iv) The Court, while fixing such amount, must have regard to all relevant factors including the one referred to in Sub-section (5) of 357 of the Code of Criminal Procedure;
- v) No unreasonable amount of compensation can be directed to be paid.

73. In the facts and circumstances of the case, we, however, think it reasonable to direct the appellant to deposit a sum of Rs. 1 lakh within a period of four weeks, from date. The Respondent - Company, however, would be entitled to withdraw the said amount.

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The deposit of such amount by the appellant shall be without prejudice to the rights and contentions of the parties in the appeal.”

8. Hon`ble Apex Court in the aforesaid case of **Dilip S. Dahanukar (supra)** also observed as under:-

“69. 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 in view, the doctrine of purposive construction should be applied.

70. We would, however, like to put a note of caution that the right of an accused unnecessarily need not be enlarged but it is the court's duty to duly protect his right.”

9. Identical matter was before Hon`ble Supreme Court in **Stanny Felix Pinto Vs. M/s Jangid Builders Pvt. Ltd., 2001(1) R.C.R. (Criminal) 537** and Hon`ble Apex Court was dealing with matter relating to case under Section 138 of the Act and observed as under:-

“We feel that while suspending the sentence for the offence under [Section 138](#) of the Negotiable Instruments Act it is advisable that the court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the Court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal. In this case the grievance of the appellant is that he is required by the High Court to remit a huge amount of rupees four lakhs as a condition to suspend the sentence. When considering the total amount of fine imposed by the trial Court (twenty lakhs of rupees) there is nothing unjust or unconscionable in imposing such a condition. Hence, there is no need to interfere with the impugned order. As such no notice need be issued to the respondent. Appeal is

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accordingly dismissed.”

10. In the light of view taken by Hon`ble Apex Court in **Dilip S. Dahanukar and Stanny Felix Pinto's cases (supra)** and the facts of the present case, no interference is called for in the impugned order passed by learned Additional Sessions Judge, Faridabad.

11. The present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

February 13, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes