

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

(1) CRM-M No.30554 of 2019 (O&M)

M/s Sun Dweep Engineers Pvt. Ltd. and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(2) CRM-M No.30615 of 2019 (O&M)

M/s Sun Dweep Engineers Pvt. Ltd. and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(3) CRM-M No.30619 of 2019 (O&M)

M/s Sun Dweep Engineers Pvt. Ltd. and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

Date of Decision: 19.09.2019

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Kamal Chaudhary, Advocate for the petitioner(s).

MAHABIR SINGH SINDHU, J. (Oral)

This order shall dispose off the aforementioned three petitions being identical on facts and involving the common question for adjudication.

All the petitions have been filed under Section 482 of the Code

of Criminal Procedure (*for short 'Cr.P.C.'*) for quashing of impugned orders dated 12.04.2019, passed by learned Sessions Judge, Faridabad (*hereinafter referred as 'Appellate Court'*), whereby the petitioners were directed to deposit 25% of the compensation amount within a period of 30 days from the date of passing of the orders. Further prayer is for quashing the order dated 05.07.2019, thereby cancelling the bail of the petitioners and bail bonds were forfeited to the State due to their non-appearance.

For the sake of convenience, facts are noticed from CRM-M No.30554 of 2019, which, in brief, are as under:-

Respondent No.2/complainant filed complaint(s) through authorized representative, namely, Brij Mohan on 07.02.2017 alleging that complainant is engaged in the business of trading of industrial gases i.e. liquid oxygen, nitrogen etc. Petitioner Nos.2 and 3 being directors of petitioner No.1 are responsible for its day-to-day affairs. Petitioner(s) placed orders to the complainant from time to time. During the course of business, petitioner(s) purchased various types of industrial gases under different bills/cash memos and as such, there was an outstanding amount of ₹ 9,75,433/-. In order to discharge their legal liability, petitioner(s) issued 06 different cheques for an amount of ₹ 8,73 000/- including Cheque Nos.875614 dated 25.10.2016 and 875615 dated 25.11.2016 for an amount of ₹ 1.5 lakh each. All the cheques were dishonored, resulting in filing of separate complaint(s) under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'Act'*) before learned Judicial Magistrate 1st Class, Faridabad (*hereinafter referred as 'trial Court'*).

Learned trial Court, after following due procedure, taking into consideration the entire material available on record and upon hearing both sides, held the petitioner(s) guilty under Section 138 of the Act, vide judgment of conviction and order of sentence dated 14.03.2019, thereby sentencing them to undergo simple imprisonment for a period of six months and to pay an amount of ₹ 4 Lakh as compensation to the complainant jointly within one month from the date of order.

Aggrieved against the aforesaid judgment of conviction and order of sentence, petitioner(s) preferred separate appeal(s) along with the application(s) for suspension of sentence. Learned Appellate Court issued notice of the appeal to the respondent/complainant and suspended the sentence of the petitioner(s) subject to deposit of 25% amount of compensation awarded by learned trial Court within 30 days, vide order dated 12.04.2019. Thereafter, on the next date of hearing i.e. 16.05.2019, petitioner(s) requested an adjournment to comply with the order dated 12.04.2019 and which was granted. On the next date also i.e. 05.07.2019, neither any amount was deposited in terms of order dated 12.04.2019; nor petitioner(s) appeared in person or through their Counsel and that led to the passing of impugned order dated 05.07.2019, cancelling their bail. Hence, the present petitions.

Contentends that learned Appellate Court has adopted a totally wrong approach while cancelling the bail granted to the petitioner(s) merely on non-deposit of 25% amount of compensation as the offence under Section 138 of the Act is bailable.

Heard learned Counsel for the petitioner(s) and perused the paper-book.

Record reveals that conviction and sentence in the present case were imposed by learned trial Court on 14.03.2019 and an appeal was preferred in the month of April, 2019. Undisputedly, the sentence of the petitioner(s) was suspended by learned Appellate Court vide order dated 12.04.2019 subject to the condition of depositing an amount of 25% of the compensation amount i.e. ₹ 1 Lakh within a period of 30 days. Again on 16.05.2019, on the request of the petitioner(s), matter was adjourned and they were directed to comply with the above condition up to 05.07.2019. Yet again, on 05.07.2019, petitioner(s) failed to honour the condition for depositing of 25% of the compensation amount and learned Appellate Court cancelled the bail already granted to the petitioner(s) and forfeited their bonds in favour of the State while observing as under:-

“ *Memo of appearance filed on behalf of the respondent.
Both the appellants/accused are absent without any intimation. Even their counsel has not appeared despite several calls since morning. They have not complied the condition of the bail as per order dated 12.4.2019. In all these circumstances, bail of the appellants is cancelled and their bonds are forfeited to the State. Warrants of arrest against the appellants and notices to their respective sureties under Section 446 Cr.P.C. be issued for 26.8.2019.*”

Perusal of above order reveals that neither the petitioner(s) have complied with the condition imposed at the time of suspension of their sentence; nor appearing before learned Appellate Court. Thus, they

are misusing the concession of bail, granted to them without any lawful cause.

Concededly, Section 148 of the Amendment Act came into force w.e.f. 01.09.2018 and thus, in view of the law laid down by the Hon'ble Supreme Court in '**Surinder Singh Deswal @ Col. S.S. Deswal and others Versus Virender Gandhi**', JT 2019 (6) SC 240, petitioner(s) are under obligation to deposit the amount in question and reference in this regard can be made to para 8 of the same, which reads as under:-

“ It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which Section 148 of the N.I. Act came to be amended and therefore amended Section 148 of the N.I. Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under Section 138 of the N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I. Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in Section 148 of the N.I. Act and while suspending the sentence in exercise of powers under Section 389 of the Cr.P.C., when the first appellate court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the N.I. Act.”

The contention that bail cannot be cancelled in a bailable offence merely on account of non-deposit of 25% of the compensation amount by the Appellate Court is not acceptable in view of the decision dated 10.09.2019 of this Court, passed in CRM-M No.37243 of 2019 along with connected matters, in which, it has been held that although offence under Section 138 of the Act is bailable, but in case, there is non-compliance of the condition imposed while suspending the sentence, then learned Appellate Court is well empowered to cancel the bail granted to the petitioner(s) and reference in this regard can be made to para 12 and 13.

“12) No doubt, the offence under Section 138 of the Act is bailable, but petitioner(s) stand already convicted and their sentence have been suspended under Section 389(1) of the Cr.P.C., which inter alia envisages that pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded in writing, order that the execution of the sentence or order appealed against be suspended and, also, that if he is in confinement, be released on bail. As noticed in para 10 of this order, the sentence of petitioner(s) was suspended by learned Appellate Court subject to deposit of 25% of the amount of compensation awarded by learned trial Court in favour of the respondent/complainant and also to furnish bail bond as well as surety bond in the sum of ₹ 50,000/- with one surety in like amount. Thus, it cannot be said that sentence of the petitioner(s) has been suspended unconditionally or as a matter of course.

Impugned order reveals that while cancelling the order of suspension of sentence, learned Appellate Court has directed the petitioner(s) to surrender before trial Court within four days from the date of passing of the order and in

case of non-surrender, trial Court was directed to secure the presence of the petitioner(s) by issuing warrants of their arrest or by adopting other mode as per law to undergo the sentence awarded to them. The distinction while granting bail for the offence in case of bailable or non-bailable during trial is certainly a relevant factor, but after conviction, when the sentence is suspended under Section 389(1) of the Cr.P.C. subject to certain conditions incorporated in the order, then the same must be satisfied by the convict/appellant during pendency of the appeal and in case there is a violation of the condition(s) imposed, then the Appellate Court can take the remedial measures including cancellation of the bail. In the present case, sentence of the petitioner(s) was suspended, but they are misusing the concession granted by learned Appellate Court and have obstructed the smooth functioning in the matter while not appearing during the proceedings. Thus, the conduct of the petitioner(s) after release on bail have put the judicial proceedings in jeopardy while not coming forward at the time of hearing and has resulted in miscarriage of justice as well as abuse of the process of the Court. It seems that petitioner(s) have taken the Appellate Court for ride and they are under the impression that their right to remain on bail is absolute, indefeasible and unquestionable in any manner under the pretext that offence for which they have been convicted is bailable. This perception of the petitioner(s) is sadly mistaken, as conducting of smooth judicial proceedings is the paramount consideration for both sides i.e. petitioner(s) as well as respondent/complainant and maintenance of the sanctity of the Court proceedings. Still further, as on date, suspension of sentence as well as bail bonds of the petitioner(s) stand cancelled by way of the judicial order of learned Appellate Court, thus, they were under obligation to surrender before learned trial Court

forthwith and in any case, they cannot fall back on the plea that offence under Section 138 of the Act is bailable.

13) *Concededly, till date, neither the petitioner(s) have made any deposit; nor coming forward to participate with the proceedings before learned Appellate Court; nor have surrendered before learned trial Court in terms of the impugned order, therefore, in the opinion of this Court, they have no respect for the judicial orders, passed in the matter from time to time including by Hon'ble Supreme Court. While taking into consideration the track record of the petitioner(s), it can be safely said that present bunch of petitions is nothing, but hair-splitting the construction of Section 148 of the Amendment Act, which has already been duly answered by the Hon'ble Supreme Court with the result that Appellate Court is well empowered to impose the condition for deposit of 25% amount of compensation at the time of suspension of sentence. Once the condition for deposit of 25% is held to be valid and attained finality, then petitioner(s) have no choice except to fulfill their commitment. Thus, the irresistible conclusion is that petitioner(s) have taken the frivolous steps just to prolong the matter on one pretext or the other. More than sufficient opportunities have already been granted to them, but neither the amount in question has been deposited; nor they are appearing before learned Appellate Court and thus trying to hoodwink the Court proceedings. Undisputedly, the concession of suspension of sentence was granted to the petitioner(s) subject to the valid pre-condition for deposit of 25% amount of compensation in terms of Section 148 of the Amendment Act and in the eventuality of breach of the same, learned Appellate Court was not only competent to cancel the order of suspension of sentence, but was also fully justified to maintain the sanctity of the judicial proceedings and to uphold the dignity of the Court while passing the*

impugned order.

In the case(s) of this nature, if the steps for cancellation of suspension of sentence had not been taken at this juncture by learned Appellate Court, then the Judicial Forums are likely to become the laughing stock at the hands of unscrupulous litigants, resulting into failure of rule of law and that would be travesty of justice.”

In view of the aforesaid facts and circumstances, this Court is not inclined to entertain the present petitions being devoid of any merits and the same are accordingly dismissed.

September 19, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>