

CRM-M-3014 of 2020

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

CRM-M-3014 of 2020
Date of Decision: 23.01.2020

Shish Pal Kashyap

....Petitioner

Versus

Ved Pal

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Akshay Kumar Jindal, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C. prayer has been made for quashing order of the lower appellate Court dated 16.01.2020 (Annexure P-1), whereby order suspending sentence of the petitioner dated 03.08.2016 has been cancelled and his bail bonds and surety bonds have been forfeited to the State for non-compliance of provisions of Section 148 of the Negotiable Instruments (Amendment) Act (in short 'the Act').

Briefly, the petitioner was tried and held guilty under Section 138 of the Negotiable Instruments Act, 1881 by the trial Court vide judgment of conviction dated 05.07.2016 and sentenced to undergo imprisonment for two years and pay double the amount of cheque as compensation to the respondent-complainant vide order of sentence dated 08.07.2016. In default of payment of compensation to undergo rigorous imprisonment for six months.

Being aggrieved, petitioner filed appeal before the appellate Court

CRM-M-3014 of 2020

along with application for suspension of his sentence. The appellate Court suspended his sentence vide order dated 03.08.2016. His appeal is, however, still pending.

On 20.09.2019, petitioner was absent and moved an application for exemption from his personal appearance before the appellate Court on the ground of illness of his wife. The appellate Court, after perusing the medical record of alleged illness of his wife, annexed with the application, rejected the same. Consequently, petitioner was ordered to be summoned through warrants of arrest. Pursuant thereto, he was produced before the Court on 28.11.2019. Petitioner again moved application for fresh bail, which was allowed by the appellate Court vide order dated 28.11.2019. He was released subject to payment of 20% of the compensation amount to the complainant. However, petitioner did not comply with aforesaid order dated 28.11.2019. Therefore, appellate Court took him in custody on 16.01.2020, vide impugned order.

Learned counsel for the petitioner referring to Section 148 of the Act *inter alia* contends that 60 days' time has been provided to a person to comply with the direction to deposit the compensation amount, which can further be extended to another 30 days. Before taking the petitioner into custody, appellate Court was required to grant 60 days' time from 28.11.2019 upto 27.01.2020, which has not yet come. Taking the petitioner into custody is illegal inasmuch as there was no condition in the order suspending sentence of the petitioner passed way back in the year 2016. Therefore, now appellate Court was not empowered to impose new condition to deposit 20% of the compensation amount.

CRM-M-3014 of 2020

Having given thoughtful consideration to the above submissions, this Court finds the instant petition completely devoid of any merit for the reasons to follow.

Period of 60 days is outer limit provided under Section 148 of the Act for compliance of order of the appellate Court qua deposit of 20% of the compensation amount. In the instant case, initially by moving applications, petitioner tried his level best to delay decision of the appeal, which, on filing in the year 2016, is still pending even after elapsing of approximately 3½ years. On 29.09.2019, in such an attempt of prolonging decision of his appeal, the petitioner moved an application for exemption from his personal appearance, taking the ground of illness of his wife. However, appellate Court taking into consideration that wife of the petitioner was discharged from the hospital on 07.05.2019 and in her OPD card dated 23.08.2019, there was no valid reason to exempt the petitioner from his personal appearance, rejected his application. Thereafter, it is not that petitioner himself appeared before the appellate Court, but Court was constrained to procure his presence by issuance of non-bailable warrants, which for one date could not be executed upon him and finally pursuant to non-bailable warrants, he was produced before the Court on 28.11.2019 and was released on that very date on his furnishing bail bonds and surety bonds with the condition to deposit 20% of the compensation amount.

In the above circumstances, when sentence of the petitioner has been suspended twice, it is his earnest duty to comply with order dated 28.11.2019, within shortest possible time without waiting for the expiry of date of outer limit. Respondent-complainant, who is aggrieved of cheque

CRM-M-3014 of 2020

bouncing, cannot be made to suffer for several years under the garb of pendency of appeal or revision of the accused, who once has already been declared as a defaulter by the trial Court.

In view of discussion made above, petition is dismissed. However, considering peculiar facts of the case, petitioner is ordered to be released on bail immediately on compliance of order dated 28.11.2019 of the appellate Court in its letter and spirit.

January 23, 2020
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No