IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 28.02.2020.

1 CRM-M-7418-2020 (O&M)

Jagpal Singh ....Petitioner.

Versus

State of Haryana and another ....Respondents.

2. CRM-M-7425-2020 (O&M)

Jagpal Singh ....Petitioner.

Versus

State of Haryana and another ....Respondents.

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CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Kunal Dawar, Advocate for the petitioner.

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Suvir Sehgal, J.

This order will dispose of two cases bearing CRM-M-7418-2020 and CRM-M-7425-2020, in which common question of law and facts are involved. However, for the sake of convenience, the facts are being taken from CRM-M-7418-2020—Jagpal Singh Vs. State of Haryana and another.

Present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 14.10.2019 (Annexure P1) passed in CRA-381-2019 dated 14.08.2019 titled as 'Jagpal Singh Vs. Sumitra Devi' in

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Complaint No.3871/2015 dated 31.07.2015 titled as 'Smt. Sumitra Devi Vs. Jagpal Singh' passed by Additional Sessions Judge, Gurugram whereby it has been ordered that in case of failure of the petitioner to deposit 20% of the cheque amount, the bail of the petitioner will be cancelled, the same being against the provision of Section 148(2) of the Negotiable Instruments Act, 1881 (for short, 'the Act') and also in violation of the judgment passed by this Court in ***CRM-M-29187-2019 titled as 'Vivek Sahni and another Vs. Kotak Mahindra Bank Ltd.'***

A criminal complaint under Section 138 of the Act was filed against the petitioner on the ground that a cheque of Rs.15,00,000/- given by the petitioner to the respondent-complainant towards the discharge of a legally enforceable debt, was dishonoured on 26.05.2015 on account of “Funds Insufficient”. After serving legal notice, the complainant filed a complaint under Section 138 of the Act. Two similar complaints were also filed by the complainant whereby two more cheques of Rs.15,00,000/- each given by the petitioner were dishonoured. The complaint was contested by the petitioner. Eventually, vide judgment dated 09.07.2019, the trial Court convicted the petitioner and vide order dated 11.07.2019 (Annexure P2) imposed a sentence of simple imprisonment for six months and compensation to the tune of Rs.19,00,000/-. Against the said judgment, the petitioner filed an appeal along with an application under Section 389(3) Cr.P.C. for suspension of sentence. The appeal came up for hearing before the Sessions Court on 21.08.2019 (Annexure P3) whereby it was adjourned to 14.10.2019 to enable the petitioner to file the certified copy of the judgment. The Appellate Court also directed the petitioner to deposit 20% of the cheque amount on the adjourned date. On 14.10.2019 (Annexure P1),

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the Appellate Court granted one month's additional time to the petitioner for deposit of the said amount. While adjourning the appeal to 11.11.2019, the Appellate Court ordered that 20% of the cheque amount be deposited on the adjourned date or else, his bail will be cancelled. The petitioner has challenged the order dated 14.10.2019 (Annexure P1) in the present petition.

The sole argument raised by counsel for the petitioner is that Section 148 of the Act nowhere provides that in case of non payment of 20% of the cheque amount, the bail granted, can be cancelled. He has placed reliance upon a judgment of Co-ordinate Bench of this Court in **CRM-M-29187-2019 titled as 'Vivek Sahni and another Vs. Kotak Mahinder Bank Ltd.,** decided on 18.07.2019.

The judgment of this Court in **Vivek Sahni case (supra)** has been considered. This Court, while disposing of the said petition, framed two questions. The second question framed by the Court was as under:-

> "W*hether on non-deposit of the amount as directed under Section 148 of the Negotiable Instruments Act, 1881, bail granted to the appellant is liable to be automatically/ consequently liable to be cancelled?"*

After examining the provisions of the Act, this Court came to the conclusion that the offence under Section 138 of the Act is bailable and there is no provision in Section 148 of the Act for recovery of the defaulted amount, and that default in payment of certain percentage of compensation or fine would not *ipso facto* result in cancellation of the bail. The above judgment was noticed in a recent decision of the Hon'ble Supreme Court in ***Surinder Singh Deswal @ Col. S.S. Deswal and others vs. Virender***

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Gandhi and another, 2020(1) R.C.R. (Criminal) 604, wherein the Hon'ble Supreme Court has held that where a conditional order of suspension of sentence has been passed by the Appellate Court, on non-fulfilment of the condition, the suspension order can be vacated. Reference may be made to Paras 17 to 19 of the judgment, which are reproduced as under:-

> *"17. The judgment of Punjab and Haryana High Court in Vivek Sahni and another(supra) which has been relied by the learned counsel for the appellants has been noted and elaborately considered by the High Court in the impugned judgment. In paragraph 14 and 15 of the impugned judgment of the High Court reasons have been given for distinguishing the Vivek Sahni' case.*
>
> *18. The High Court is right in its opinion that question No.2 as framed in Vivek Sahni's case was not correctly considered. When suspension of sentence by the trial court is granted on a condition, non- compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non- compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.*

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19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated."

In view of the above position, as settled by the Hon'ble Supreme Court, there is no merit in the present petitions. Accordingly, both the petitions are dismissed with no order as to costs.

(SUVIR SEHGAL)
JUDGE

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No

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