

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

CRR No. 2113 of 2019 (O&M)

Date of decision: 29.01.2020

Rohit

...Petitioner

Versus

Subhash Chaudhary and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Samir Rathore, Advocate for
Mr. Sumeet Goel, Advocate
for the petitioner.

Mr. Sushil Jain, Advocate
for respondent No.1/complainant.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the judgment of conviction dated 01.03.2019 and order of sentence of the even date, passed by the trial Court, vide which, the petitioner was held guilty for commission of offence punishable under Section 138 of the Negotiable Instruments Act (*for short 'N. I. Act'*) and was sentenced to undergo rigorous imprisonment for a period of two years and to pay a compensation of Rs. 1,00,00,000/- (Rupees one crore) to the complainant under the provisions of Section 143(1)(proviso) of the N.I. Act read with Section 357(1)(3) Cr.P.C. within a period of two months from the date of passing the order; as well as the judgment dated 01.07.2019, vide which, the appeal filed by the petitioner challenging the aforesaid judgment of conviction and order of sentence was dismissed by the lower appellate Court.

The lower appellate Court, while dismissing the appeal of the

petitioner, has passed the following order:

“Appellant-accused has failed to make the payment as per settlement effected between the parties on 08.05.2019 and then on 06.06.2019. Heard. In criminal complaint bearing No.NACT 2963 of 2016 filed by complainant Subhash Chaudhary (now respondent), accused Rohit (now appellant) was convicted by the Court of Sh. Rakesh Kumar, learned Judicial Magistrate Ist Class, Faridabad, under Section 138 of Negotiable Instruments Act vide judgment dated 01.03.2019. Vide a separate order of even date, the appellant-accused was sentenced to undergo simple imprisonment for a period of two years and also to pay the compensation amount of ₹1,00,00,000/- (₹1 crore) to the complainant-respondent. Against the above judgment of conviction and order of sentence, this appeal was filed. However, parties arrived at a compromise before this Court on 08.05.2019 as per which appellant-accused agreed to pay ₹70 lacs to the respondent-complainant within a month, undertaking that in case he fails to make payment as per compromise, he will be bound by the trial Court judgment of conviction and order of sentence and his appeal may be dismissed. Case was accordingly adjourned to 06.06.2019 for payment. On the adjourned date of 06.06.2019, appellant failed to make the payment of settlement amount. Compromise was again effected between the parties on that day that appellant-accused shall pay ₹70 lacs with additional amount of ₹ 2 lacs for delayed payment. Case was then adjourned for today i.e. 01.07.2019 for payment of ₹72 lacs by the appellant-accused to the respondent-complainant. However, appellant has failed to make the payment and has, thus, breached the undertaking given on 08.05.2019 and 06.06.2019. He submits that he is unable to make the

payment. In view of the failure of the appellant-accused to make payment of settlement amount, present appeal is hereby dismissed as he is bound by the impugned judgment of conviction and order of sentence recorded by learned trial Court, as per the statement made by him before this Court on 08.05.2019 and then on 06.06.2019. Appellant-accused be taken into custody so as to carry out the sentence as imposed by learned trial Court. His jail warrants be prepared. Appeal file be consigned to records. Trial Court record be sent back along-with a copy of this order.”

Learned counsel for the petitioner has argued that even if some talks of compromise was going on during the pendency of the appeal and on account of an undertaking given by the petitioner before the lower appellate Court and having failed to abide by the same, the lower appellate Court could not have dismissed the appeal and should have adjudicated the case on merits as the complainant had a separate remedy for the violation of the undertaking, if any, on the part of the petitioner.

Learned counsel for the petitioner further argued that out of two years of rigorous imprisonment awarded by the trial Court, the petitioner has undergone actual sentence of 07 months and 14 days and he is not involved in any other case of similar nature.

Learned counsel for respondent No.1/complainant could not dispute that the lower appellate Court has not decided the appeal on merits and the same was dismissed for the reasons that the petitioner failed to abide by the undertaking given by him before the lower appellate Court.

Learned counsel for respondent No. 1/complainant has no serious objection if the matter is remanded back to the lower appellate Court

for deciding the appeal afresh on merits, however, submitted that since it is an old matter, the appeal may be decided by the lower appellate Court in a time bound manner.

After hearing learned counsel for the parties and perusing the order passed by the lower appellate Court dismissing the appeal of the petitioner, I find merit in the present petition.

Admittedly, the lower appellate Court has not decided the appeal on merits and has dismissed it only on account of default made by the petitioner with regard to undertaking given on 08.05.2019 and 06.06.2019 that he will make the payment to the complainant.

Accordingly, since the appeal was not adjudicated on merits, the impugned judgment dated 01.07.2019, passed by the lower appellate Court is hereby set aside and the matter is remanded back to lower appellate Court for deciding the same on merits.

The parties are directed to appear before the lower appellate Court on 13.02.2020 and the appeal shall be decided within a period of four months thereafter.

Since the impugned judgment dated 01.07.2019 is set aside and the matter is remanded back to lower appellate Court for its decision on merits, let a release order be prepared and issued to Superintendent/Deputy Superintendent, District Prison, Faridabad for the release of the petitioner forthwith, if he is not required in any case.

29.01.2020

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No