

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

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(PROCEEDINGS THROUGH V.C.)

CM-5396-CII-2020 & CACP-6-2020

DATE OF DECISION: JANUARY 15, 2021

Ramesh

.....Appellant

VERSUS

Sanjay Kumar

....Respondent

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA**

**Present: Mr. Ishan Khetarpal, Advocate,
for the appellant.**

**Mr. Mahipal Singh Bisht, Advocate,
for the respondent.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

This appeal has been preferred against the order dated 21.10.2016 passed in a petition filed by the respondent-Sanjay Kumar under Section 12 of the Contempt of Court Act, 1971 for taking appropriate action against the appellant for wilful disobedience of the undertaking given to the Court of Judicial Magistrate Ist Class, Karnal, on 30.09.2014.

Briefly, the facts are that respondent-Sanjay Kumar filed a complaint under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'NI Act'), relating to a cheque dated 17.04.2010 for an amount of ₹5,50,000/-, which was dishonoured because of insufficiency of funds. Appellant-Ramesh suffered a statement before the

Judicial Magistrate Ist Class, Karnal, on 30.09.2014 to the effect that a compromise has been entered into between the parties and he would pay an amount of ₹5,50,000/- upto 17.11.2014. A duly signed cheque dated 17.11.2014 amounting to ₹5,50,000/- drawn in the name of respondent-Sanjay Kumar was handed over. He further made a statement that in case the said cheque is not encashed, the respondent would be at liberty to take legal action against appellant-Ramesh. It is on the basis of the same that the complaint under Section 138 of NI Act was disposed of.

Having not honoured the undertaking given to the Court, C.O.C.P. No.332 of 2015 (Sanjay Kumar Vs. Ramesh) was preferred by respondent-Sanjay Kumar, where the Court, in the light of the orders passed by this Court, found that the undertaking, as given to the Court, has not been complied with and accordingly proceeded to allow the contempt petition, holding appellant-Ramesh guilty of contempt of Court and convicted him for a period of six months simple imprisonment with fine of ₹2,000/- and in case of failure to pay the fine, to further undergo sentence of another one month vide impugned order dated 21.10.2016.

It has so transpired that the matter has been amicably resolved/settled between the parties and the payment has been received by respondent-Sanjay Kumar (petitioner therein). It is at that stage that the present appeal has been preferred.

Counsel for the appellant submits that in the light of the matter having been amicably resolved between the parties and the contempt being of civil nature, a lenient view be taken and punishment of simple imprisonment for a period of six months may be set-aside by retaining the fine as imposed by the learned Single Judge. It is also asserted that sentence

of imprisonment is to be imposed in an exceptional situation and in extreme cases only the said sentence is required to be passed. In the present case, the non-compliance of the undertaking by the appellant was neither intentional nor deliberate but because of circumstances, which were beyond the control of the appellant. Reliance has also been placed upon the observations of Hon'ble Supreme Court in Pushpaben and another Vs. Narandas V. Badiani and another, 1979 AIR SC 1536. He, therefore, contends that the sentence of imprisonment may be set-aside.

Counsel for respondent-Sanjay Kumar acknowledges the fact that payment has been received by the said respondent and he has no grievance as of now with regard to the undertaking given by the appellant to the Court. He also prays that the sentence of simple imprisonment as imposed be set-aside.

Having considered the facts and circumstances of the present case and keeping in view the explanation, which has been put forth by the appellant, we accept the same to the extent of setting-aside the order of sentence of simple imprisonment of six months dated 21.10.2016 passed by the learned Single Judge by taking a lenient view, especially in the light of the observations of Hon'ble Supreme Court in Pushpaben's case (supra) in Para 6, where it has been held as under:-

“A close and careful interpretation of the extracted section leaves no room for doubt that the Legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it thinks that ends of justice so require. Thus before a Court passes the

extreme sentence of imprisonment, it must give special reason after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus the sentence of imprisonment is an exception while sentence of fine is the rule.”

In view of the above, the present appeal is partly allowed and the sentence of six months simple imprisonment passed by this Court vide order dated 21.10.2016 is hereby set-aside. However, sentence of punishment to the extent of fine of ₹2,000/- and in default of payment thereof to undergo simple imprisonment for one month is maintained.

As the main appeal stands decided, no order is required to be passed on C.M. No.5396-CII of 2020.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**January 15, 2021
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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No