

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

Date of Decision: 20.04.2021

(1) CRM-M-16036-2021

Vinod SirohiPetitioner

Versus

State of Haryana and anotherRespondents

(2) CRM-M-16027-2021

Vinod SirohiPetitioner

Versus

State of Haryana and anotherRespondents

(3) CRM-M-16030-2021

Vinod SirohiPetitioner

Versus

State of Haryana and anotherRespondents

CORAM: Hon'ble Mr. Justice Harnaresh Singh Gill

Present: Mr. Mohit Chaudhary, Advocate,
Mr. Kunal Sachdeva, Advocate and
Mr. Mayank Dawar, Advocate, for the petitioner.

Harnaresh Singh Gill, J.

This order shall dispose of the above noted three petitions, as common questions of law and facts are involved therein. However, for facility of reference, the facts are taken from CRM-M-16036-2021, being the lead case.

The petitioner lays challenge to the order dated 18.03.2021 (Annexure P.1) passed by the learned Sessions

Judge, Sirsa, whereby having failed to comply with the earlier order dated 22.07.2019 passed by the said Court, the bail granted to the petitioner was cancelled, and he was ordered to be taken into custody.

Vide judgment dated 31.01.2019, passed by the learned Sub Divisional Judicial Magistrate, Ellanabad, the petitioner was convicted of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and vide order dated 04.02.2019 passed by the said Court, he was sentenced to undergo simple imprisonment for six months and to pay a compensation of Rs.16,50,000/- to the complainant.

Aggrieved there-against, the petitioner filed an appeal before the learned Sessions Judge, Sirsa. Vide order dated 02.03.2019, passed by the said Court, the appeal was admitted and the sentence of the petitioner was suspended during the pendency of the appeal. Later, the respondent had moved an application for issuance of directions to the petitioner (appellant) to pay 20% of the compensation amount, as per Section 148 of the Act (wrongly mentioned as Section 143-A in the application).

After contest by the petitioner, the said application was decided by the learned Sessions Judge, Sirsa, vide order dated 22.07.2019, concluding as under:-

“12. It is claimed by accused-person that amount due itself in dispute because an amount of Rs.1.25 crore has been debited as interest in the account of respondent-Company, but it cannot be looked into because appellant-respondent issued cheque which gives rise to a presumption that this amount was due against company and appellant was its Director. It is claimed that he is suffering from cancer. That may be true, but it does not absolve him of his liability. In these circumstances, he is directed to deposit 20% of the compensation amount with the Court within two months. It is also held that in case this appeal is accepted, he would be able to recover this amount from complainant.”

However, when the petitioner failed to comply with the said order, the learned Sessions Judge, Sirsa, vide impugned order, cancelled the bail granted to the petitioner and he was ordered to be taken into custody.

As noticed above, the petitioner, aggrieved against the said order, has filed the present petition.

Learned counsel for the petitioner has vehemently contended that for non deposit of 20% of the compensation amount, the bail granted to the petitioner ought not to have been cancelled. While relying upon the judgment of a Coordinate Bench of this Court in Vivek Sahni and others Vs. Kotak Mahindra Bank Ltd., 2019(4) RCR (Criminal) 614, it is contended that the failure to

deposit the 20% of the compensation amount cannot lead to cancellation of bail granted and rather the said amount should be recovered as per Section 421 Cr.P.C. It is further contended that SLP against the said judgment, was dismissed by the Hon'ble Apex Court in limine, vide order dated 02.12.2019. It is, thus, submitted that the finding of the Coordinate Bench, having attained finality with the dismissal of the SLP by the Hon'ble Apex Court, the learned Sessions Judge, ought not to have cancelled the bail granted to the petitioner. Vociferously terming the said order as illegal, a prayer is made to set aside the same.

However, I do not find any merit in the said arguments raised by the learned counsel for the petitioner.

It may be noticed that earlier the Hon'ble Apex Court in the judgment delivered in Surinder Singh Deswal @ Col. S.S. Deswal and others Vs. Virender Gandhi, 2019(3) RCR (Criminal) 186, held that the amendment carried out in Section 148 of the Act, would be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the Act, even in a case where the criminal complaints were filed prior to amendment Act No. 20/2018 i.e. prior to 01.09.2018. In the said bunch of cases, a Coordinate Bench of this Court, had upheld the directions issued by the lower Appellate Court regarding the deposit of 25% of the compensation amount.

At a later of point of time i.e. on 10.09.2019, a Coordinate Bench of this Court while delivering its judgment in Surinder Singh Deswal and others Vs. State of Haryana and another, 2019(4) RCR (Criminal) 801, upheld the order passed by the lower appellate Court as regards the direction of deposit of 25% of the compensation amount, as a condition precedent for suspension of the sentence of the appellant/petitioner therein. The law laid down by another Coordinate Bench of this Court in Vivek Sahni's case, was distinguished, holding therein that the observations in the said case were alien to the law laid down by the Apex Court in Deswal's case.

The judgment of the Single Bench of this Court in Surinder Singh Deswal's (2nd case), was upheld by the Apex Court in Surinder Singh Deswal @ Col. S.S. Deswal and others Vs. Virender Gandhi and another, 2020(1) RCR (Criminal) 604.

The following observations made by the Hon'ble Apex Court, are very material and relevant to extract:-

“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.

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.

20. Insofar as the judgment of the Bombay High Court in Ajay Vinodchandra Shah (supra) which has been relied by the learned counsel for the appellant, it is sufficient to observe that the High Court did not have benefit of judgment of this Court dated 29.05.2019 in Surinder

Singh Deswal's case. The judgment of the Bombay High Court was delivered on 14.03.2019 whereas judgment of this Court in appellants' case is dated 29.05.2019. In view of the law laid down by this Court in Surinder Singh Deswal's case decided on 29.05.2019, the judgment of Bombay High Court in Ajay Vinodchandra Shah's case cannot be said to be a good law insofar as consequences of non-compliance of condition of suspension of sentence is concerned."

A perusal of the observations of the Hon'ble Apex Court made in para 17 of the judgment would make it clear that the view taken by the Single Bench of this Court in Vivek Sahni's case (supra), has been distinguished.

This Court is bound by the law laid down by the Hon'ble Apex Court in Surinder Singh Deswal's (supra) and thus, finds no reason to agree with the submissions made by the learned counsel for the petitioner.

In view of the above, no fault could be found with the impugned order passed by the learned Sessions Judge, Sirsa.

Hence, the present bunch of the petitions, is hereby dismissed.

20.04.2021
ds

(Harnaresh Singh Gill)
Judge

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No