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

CRM-M-36711-2021 (O&M)

Date of Decision: 08.09.2021

Jagbir

.. Petitioner

Vs.

Sushil Devi

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Rajender Chhokar, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

Petitioner/convict has filed this petition under Section 482 Cr.P.C. to challenge the order dated 26.08.2021 passed by ld. Addl. Sessions Judge, Panipat in Criminal Appeal No.239/2018. The order reads as under:

“An application for exemption from personal appearance of appellant/accused Jagbir moved. Heard. Due to circumstances explained in the application, presence of appellant/accused is exempted for today only.

Payment of compensation amount not deposited by appellant/accused. Lower Court record not received. Arguments not advanced. Adjournment sought by ld. Counsel for respondent. Heard. Now, to come up on 07.09.2021 for 20% payment of compensation amount as well as for final arguments. Lower Court record be also summoned for that date.”

Learned counsel has argued that the petitioner was convicted for an offence under Section 138 Negotiable Instruments Act, 1881 and against the judgment of conviction dated 12.07.2018 and order of sentence dated 17.07.2018, he preferred Criminal Appeal No.239/2018, which is pending adjudication. In respect of the order dated 26.08.2021, the learned counsel has stated that the petitioner would deposit the requisite amount, but has prayed for indulgence of this Court for stay of the Appellate Court proceedings on the ground that the suit for mandatory injunction filed by the petitioner against the complainant (defendant) for issuance of a debt

clearance certificate is pending. He has further argued that though in defence evidence, sufficient evidence was adduced by the petitioner to show that the alleged liability ceased to exist upon payment by him, however, the said evidence was ignored by the trial Court while holding him guilty. He submits that the final outcome of the suit shall have a direct bearing upon the pending appeal, therefore, the proceedings before the Appellate Court be stayed.

After hearing the learned counsel, this Court does not find any merit in the arguments, as the validity and correctness of the judgment of conviction and order of sentence passed by the trial Court is yet to be ascertained. It is settled law that the Appellate Court threadbare examines the entire evidence adduced by both the parties before arriving at a just conclusion to either affirm or set aside the verdict of trial Court. The suit by the petitioner has been filed recently and it shall have no bearing on the criminal proceedings, as the Appellate Court is yet to examine the evidence of both the parties before the trial Court.

Needless to observe that the Appellate Court has to examine the same material, which was produced before the trial Court and it shall be open for the petitioner/convict to raise his arguments in respect of the defence evidence.

Resultantly, no case is made out for exercise of inherent powers under Section 482 Cr.P.C.

Dismissed.

08.09.2021
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE