

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

CRM-M-48708-2021

Date of Decision: 22.11.2021

Harbir Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Pawan Attri, Advocate for the petitioner

ASHOK KUMAR VERMA, J.

1. The petitioner has filed this petition under Section 482 of the Cr.P.C. challenging the impugned order dated 18.03.2019 (Annexure P-6) passed by the Additional Sessions Judge, Kurukshetra, vide which application for reviewing the order dated 17.12.2018 (Annexure P-4) was dismissed and suspension of sentence of the petitioner pending appeal was cancelled and his bail bonds were forfeited.

2. In a nutshell, the facts as culled out from the paper-book are that respondent No.2-HDFC Bank (complainant) filed a complaint against the petitioner under Section 138 of the Negotiable Instrument Act, 1881 (for short 'NI Act') before Judicial Magistrate First Class, Yamuna Nagar at Jagadhari. The petitioner along with his mother borrowed Rs.11,50,000/- on 28.02.2014 for crop loan and Rs.3,30,000/- for term loan from the respondent-Bank. The cheque dated 06.12.2016, issued by the petitioner in favour of respondent Bank for an amount of

Rs.11,50,000/- stood dishonoured. The complaint filed by the respondent-Bank was allowed by Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri vide its judgment dated 27.11.2018 and vide order of quantum of sentence dated 28.11.2018, the petitioner was convicted to undergo rigorous imprisonment for a period of one year for offence punishable under Section 138 of the NI Act and he was directed to pay compensation to the tune of Rs.13,00,000/- in terms of Section 357(3) Cr.P.C. to the respondent-Bank i.e. the complainant within two months and in default of the payment, the petitioner was directed to undergo further rigorous imprisonment for three months, as per law laid down by the Hon'ble Supreme Court in '*Hari Singh Vs. Sukhbir Singh, 1988 (4) SCC 551*).

3. Against the aforesaid judgment and orders, the petitioner filed an appeal alongwith an application for suspension of sentence before the Additional Sessions Judge, Yamunanagar at Jagadhari. Vide its order dated 17.12.2018 (Annexure P-4), the sentence awarded by the trial Court was suspended till the disposal of appeal and the petitioner was admitted to bail. He was further directed to deposit 20% amount of the compensation awarded by the trial Court. Against the impugned order dated 17.12.2018 (Annexure P-4), the petitioner filed application for reviewing the said order. The aforesaid review application has been dismissed vide impugned order dated 18.03.2019 (Annexure P-6) passed by the Additional Sessions Judge, Yamunanagar at Jagadhari. While dismissing the application, the Additional Sessions Judge cancelled the bail of the petitioner and his bail bonds were forfeited to the State and warrant of arrest against the petitioner was also issued.

4. Learned counsel for the petitioner submits that the impugned order passed by the trial Court directing him to deposit 20% of the amount is illegal and arbitrary as in default of payment of certain percentage of compensation or fine would not *ipso facto* result in cancellation of bail and that the conditions of grant of bail cannot be made onerous for the accused. Learned counsel further submits that the respondent-Bank has already got ex-parte arbitral award in its favour and moved an application for execution of the arbitral award and the dues can be recovered by the bank by selling the mortgaged property already attached. In support of his submissions, learned counsel places reliance in case '**Vivek Sahni and Another Vs. Kotak Mahindra Bank Ltd., 2019(4) R.C.R.(Criminal) 614**'.

5. I have heard learned counsel for the petitioner and gone through the paper book. I am not impressed with the submissions of the learned counsel for the petitioner.

6. Indisputably the petitioner is an accused in a complaint under Section 138 of the NI Act. Vide order dated 27/28-11-2018 passed by the trial court, he was convicted to undergo rigorous imprisonment for a period of one year and to pay Rs.13,00,000/- as compensation to the respondent-Bank within two months from the date of the order and in default, he was directed to undergo rigorous imprisonment further for a period of three months. Thereafter the petitioner has filed appeal against the orders dated 27/28-11.2018 alongwith an application for suspension of sentence during the pendency of appeal before the Additional Sessions Judge, Yamuna Nagar at Jagadhri whereby the appellate court directed the petitioner to

deposit 20% of the amount of compensation awarded by the trial Court within a period of 60 days from the date of its order dated 17.12.2018. Instead of depositing the aforesaid amount, the petitioner chose to file review application which was dismissed by the Additional Sessions Judge vide impugned order dated 18.03.2019. While dismissing the review as well as exemption application, the Additional Sessions Judge observed that the statutory period of 90 days for compliance of the order dated 17.12.2018 has elapsed but the requisite compliance has not been made and the said application has been filed to delay the proceedings of the case in order to avoid the aforesaid payment. Consequently, petitioner's bail was cancelled and his bail bonds were forfeited to the State.

7. Moreover, Section 148 of the NI Act has been introduced by amendment with effect from 01.09.2018 which mandates that the Appellate Court may order the appellant to deposit a sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. The challenge to the said amendment was negated by the Supreme Court in the case of '**Surinder Singh Deswal @ Col. S.S. Deswal and others Vs. Virender Gandhi**, 2020(1)RCR (Criminal) 604.

8. In the present case, admittedly, the petitioner did not comply with the direction of the Appellate Court issued vide impugned order dated 17.12.2018 to deposit 20% of the amount of compensation whereas the petitioner filed application for review of the order dated 17.12.2018 before the appellate court which was also dismissed vide impugned order dated 18.03.2019 and now after a period of about more than 2 ½ years, the petitioner has approached this Court for setting

aside the impugned orders. The conduct of the petitioner itself shows that he is adopting dilatory tactics in order to evade and avoid the payment of compensation of Rs.13,00,000/- to the respondent-Bank. The reliance placed by the learned counsel for the petitioner on a judgment of coordinate bench in ***Vivek Sahni and Another (supra)*** is on different footings as in the aforesaid case the issue involved was with respect to the adjustment of the amount already recovered under SARFAESI Act. Admittedly, in the present case, no amount has been recovered or adjusted in any other proceedings till date. In this view of the matter, the reliance placed by the learned counsel for the petitioner is trackless and misconceived and the same is not applicable to the peculiar facts and circumstances of the present case.

9. For the foregoing reasons, I find no merit in this petition which is hereby dismissed.

(ASHOK KUMAR VERMA)
JUDGE

22.11.2021
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *Yes/No*