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

117

CRM-M-49672-2021

Date of decision : 09.12.2021

Tarlochan Singh

... Petitioner

Versus

Sohan Lal Sharma

.. Respondent

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Jitesh Sharma, Advocate for the petitioner.

Anupinder Singh Grewal, J. (Oral)

This petition is directed against the order dated 29.09.2021 (Annexure P-2) passed by the Sessions Judge, Panchkula whereby the petitioner has been directed to deposit 25% of the compensation amount i.e. Rs.12,50,000/- by way of a demand draft or in the nature of a bank guarantee in favour of the complainant/respondent on or before 29.11.2021.

Learned counsel for the petitioner contends that the petitioner had been convicted under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'). The petitioner had preferred an appeal thereagainst and the Appellate Court by the order dated 24.02.2020 (Annexure P-1) had suspended the sentence of the petitioner and also recorded that no compensation had been awarded by the trial Court. This order has been reviewed by the Appellate Court while passing the impugned order by directing the petitioner to pay 25% of the compensation amount. He further contends that such a condition could only be imposed if the trial Court had awarded compensation vide order dated 23.01.2020. He further contends that once the order has been passed by the

Appellate Court, it could not be reviewed or modified later in terms of the bar under Section 362 Cr.P.C.

Heard.

The petitioner had been convicted under Section 138 of the NI Act by the Sub-Divisional Judicial Magistrate, Kalka and sentenced to undergo simple imprisonment for a period of six months and pay the cheque amount of Rs.50 lacs jointly or severally. The operative part of the order dated 23.01.2020 is reproduced hereunder:-

*'Convict is sentenced to undergo simple imprisonment for a period of 6 months u/s 138 of Negotiable Instrument Act and pay cheque amount of Rs.50,00,000/- jointly or severally. In case a default of payment of penalty, convict shall undergo simple imprisonment for 2 months. **Penalty not paid.** File be consigned to record-room, after due compliance.'*

It is manifest that while convicting and sentencing the petitioner for a period of six months, he has been ordered to pay the cheque amount of Rs.50 lacs. Although the trial Court has not used the word 'compensation' but the condition to pay the cheque amount would have to be read as compensation.

In Section 357 of the Cr.P.C., it is stipulated in Sub-section 1 that in the event of fine being imposed, then the whole or any part of the fine can also be directed to be paid as compensation to the victim. Furthermore, in Sub-section 3 of Section 357 Cr.P.C., it is stipulated that the Court can direct that the compensation be paid to the victim.

Section 148 of the NI Act has been introduced through an amendment w.e.f. 01.09.2018 wherein it is stipulated that the Appellate Court may order the appellant to deposit such amount which shall be a minimum of

20% of the fine or compensation awarded by the trial Court. It is further provided that the amount payable under this Section would be in addition to any interim compensation paid by the appellant under Section 143A of the NI Act.

The petitioner had preferred an appeal against the quantum of conviction and the Appellate Court in the order dated 24.02.2020 (Annexure P-1), while suspending the sentence of the appellant, did not direct the petitioner (appellant therein) to pay any amount in terms of Section 148 of the NI Act by misreading the judgment of the trial Court convicting the petitioner and directing him to pay the cheque amount. The direction issued by the trial Court to pay the cheque amount, could not in any manner be construed that no compensation had been awarded. The Appellate Court by the order dated 29.09.2021 (Annexure P-2) had directed the petitioner (appellant therein) to pay 25% of the compensation amount during the pendency of the appeal. The order dated 24.02.2020 (Annexure P-1) is neither the final order nor an order finally disposing of the controversy in issue, therefore, the bar under Section 362 Cr.P.C. would not come into effect.

Section 362 of the Cr.P.C. reads as under:-

'Court not to alter judgement. Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.'

This bar is only applicable after the matter had been finally disposed of. The imposition of a condition during the pendency of the appeal subsequently cannot be held to be a review or modification of the order which would attract the bar imposed under Section 362 Cr.P.C.

The Supreme Court in the case of **State of Punjab versus Devinder Pal Singh Bhullar and others, 2011(4) SCC 770**, has held that the bar under Section 362 Cr.P.C. is applicable to a final order or to an order finally disposing of the matter. The relevant extract of the judgment is reproduced hereunder:

“**Section 362** Cr.P.C. is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law.”

“Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. Moreover, the prohibition contained in **Section 362** Cr.P.C. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under **Section 482** Cr.P.C. has no authority or jurisdiction to alter/review the same.”

At this juncture, learned counsel for the petitioner submits that the petitioner is in financial difficulty and was legitimately pursuing his legal remedy, therefore, he may be granted some more time to deposit 25% of the cheque amount. The Supreme Court in the case of **Surinder Singh Deswal @ Col. S.S. Deswal and others vs. Virender Gandhi**, in **Criminal Appeal Nos.917-944 of 2019 (arising out of SLP (Criminal) Nos.4948-4975/2019**, dated 29.05.2019 as well as in the case of **G.J. Raja versus Tejraj Sharma** passed in Criminal Appeal No.1160 of 2019 on 30.07.2019, had granted four weeks' further time to the appellants therein to make the payment.

In view of the above, I do not find any infirmity in the order

passed by the Appellate Court directing the petitioner to pay 25% of the compensation amount and therefore, the petition stands dismissed.

However, the petitioner is granted further thirty days to deposit 25% of the cheque amount as directed by the Appellate Court from the date of receipt of certified copy of this order.

(ANUPINDER SINGH GREWAL)
JUDGE

December 09, 2021
sonia gugnani

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