

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

(1) **Criminal Revision No. 258 of 2022 (O&M)**
Date of Decision: 11.02.2022

Ashok Aggarwal

..... Petitioner

Versus

State of U.T., Chandigarh and another

..... Respondents

AND

(2) **Criminal Revision No. 265 of 2022 (O&M)**

Dinesh Bansal

..... Petitioner

Versus

State of U.T., Chandigarh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Ms. Sarika Gupta, Advocate
for the petitioner(s) (in both cases).

Mr. Anil Kumar Lamdharia, Advocate
for respondent No. 1 – U.T., Chandigarh (in both cases)

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. This order shall dispose of the present two criminal revision petitions, as they arise from a common thereto order of 23.02.2021, as, made by the learned JMIC, Chandigarh.

2. A complaint No. 11511 of 2017 has been filed under Section 138 of the Negotiable Instruments Act, 1881, by the complainant – M/s. Anrose Pharma, before the learned Magistrate concerned, therein, (i) M/s. Biotropic Pharma (P) Ltd.; (ii) Mr. Dinesh Bansal; and (iii) Mr. Ashok Aggarwal, are arrayed as accused.

3. The learned JMIC, Chandigarh, through, a verdict, made on 23.02.2021, convicted the afore accused for an offence constituted under Section 138 of the Negotiable Instruments Act. Moreover, through a separate sentencing order, as, drawn on 23.02.2021, the learned JMIC concerned, also proceeded to sentence, convicts – accused / Dinesh Bansal, and, Ashok Aggarwal, to undergo rigorous imprisonment for a period of one year each. In addition, the learned JMIC concerned, also directed the above named accused to pay compensation to the complainant comprised in a sum of Rs. 60 lakhs, rather within a period of one month from the expiry of period prescribed for appeal. The above verdict of conviction, and, order of sentence, became appealed by the convicts, before the learned Appellate Court. Moreover, the aggrieved convicts (supra) also, during the pendency of the apposite appeal, instituted an application cast under Section 389 of the Cr.P.C, before the learned Appellate Court concerned.

4. The learned Appellate Court concerned, through an order made thereon on 22.03.2021, though proceeded to suspend the execution of sentence of imprisonment, as, imposed upon the convict(s), by the learned trial Court, and made it subject to theirs respectively furnishing bail bonds in the sum of Rs. 50000/- with one surety in the like amount, to the satisfaction of learned trial Court concerned. However, in the order, as, made on the afore application, the learned Additional Sessions Judge, Chandigarh, also proceeded to direct the convict / appellant concerned, to deposit 20% of the disputed cheque amount, given it being a part of the compensation amount, as, became adjudged, qua the complainant, by the learned trial Court concerned.

5. The convict(s) become(s) aggrieved therefrom, and, have through the instant revision petition(s), made a challenge thereto.

6. Heard the learned counsel for the parties.

7. Though, the learned Additional Sessions Judge, Chandigarh, as a pre-condition for suspending the execution of sentence of imprisonment, could proceed to tenably impose an injunction, upon, the convict(s)-appellant(s) concerned, to deposit a reasonable per centum of the disputed cheque amount, before the learned trial Judge concerned. However, the learned Additional Sessions Judge concerned, could not proceed to direct, the convict(s)-appellant(s) concerned to, as a pre-condition for the order suspending the execution of sentence of imprisonment (supra), as, became imposed upon the convict(s), by the learned Magistrate concerned, rather taking the fullest effect, to hence also deposit 20% of the cheque amount. The afore made direction(s) appears to be oppressive, especially given that a sum of Rs. 60 lakhs became assessed, by the learned Magistrate concerned, as, compensation to the complainant. Necessarily, also it negates the efficacy of the above impugned order, besides fetters the liberty of the petitioner.

8. Therefore, the learned Additional Sessions Judge concerned, was enjoined to ensure his bringing inter se proportionality inter se the compensation, and / or the cheque amount, and, to thereafter, impose a tenable, and, just condition for the orders, suspending the execution of sentence of imprisonment, as imposed upon the convict(s)-appellant(s), by the learned trial Judge concerned, rather taking the fullest effect, through his

hence directing them to deposit a reasonable, and, just sum, before the

learned trial Judge concerned.

9. Therefore, the lack of application of mind by the learned Additional Sessions Judge concerned, to the necessity of his bringing reasonableness and proportionally inter se the prima facie exorbitant sum of compensation amount, as, encumbered upon the convict(s)-appellant(s) / petitioner(s), rather for liquidation to the complainant, and consequently also with the cheque amount, rather thereupon brings the ordained deposit, within the realm of arbitrariness, and, also has resulted in a harsh, and, oppressive pre-condition becoming imposed upon the convict(s) in the impugned order, in hence the impugned order becoming fully efficacious.

10. Conspicuously, also when the above directions have been made separately upon the convicts, in their respective appeals concerned. Therefore, it was imperatively sagacious, for the learned Additional Sessions Judge concerned, to proceed to direct each of the convicts, in their respective appeals, to deposit a reasonable per centum of the cheque amount, as a pre-condition for the order(s), suspending the execution of imprisonment of sentence, hence taking the fullest effect. Even the afore factor has been discounted by the learned Additional Sessions Judge concerned.

11. Consequently, this Court proceeds to accept the petition, and, proceeds to modify the impugned order, as, made by the learned Additional Sessions Judge concerned, through a direction being made upon the convict(s) concerned, to within three weeks hereafter, deposit 10% amount of the disputed cheque amount, before the learned trial Court concerned.

Alongwith the afore deposit being made, the aggrieved convict(s), shall, if

they have not earlier complied with the order (supra), as made upon them, by the learned Additional Sessions Judge concerned, inasmuch as theirs furnishing personal and surety bonds in the sum of Rs. 50,000/- each, to the satisfaction of the trial Court concerned, they shall also mete compliance thereto, within three weeks hereafter.

12. Disposed of.

February 11, 2022

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**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>