

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

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CRM-M-13123-2022

Date of decision: 18.05.2022

SUKHWINDER SINGH

.....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. Manjeet Singh, Advocate
for the petitioner.

Mr. P.P.Chahar, DAG, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner became aggrieved from the verdict of conviction made by the learned trial Judge upon complaint bearing No. NACT-696 of 2017 titled *M/s Roshan Lal Lachman Dass versus Sukhwinder Singh @ Sukha*, and, also became aggrieved from the imposition of substantive sentence of imprisonment, extending upto a term of 3 years, besides became aggrieved from the imposition, upon him, of compensation twice the amount of the cheque amount, and, hence was led to institute there against, an appeal before the learned first Appellate Court.

2. Within the appeal bearing No. 15 of 2021, an application under Section 389 Cr.P.C. was instituted, and, thereon the learned Appellate Court ordered for suspending the execution of substantive

sentence, and, of awarding of compensation qua the complaint, but subject to the convict depositing 20 per cent of the compensation amount in its establishment.

3. The above made order leads the convict to make an assault thereagainst through, his instituting the instant petition before this Court.

4. Though the above imposed pre-condition, for the order suspending the execution of the substantive sentence of imprisonment, was valid, but yet the principle of proportionality, and, reasonableness also was required to be borne in mind by the learned Judge concerned, in as much as, his deriving the above parameter, from the factum of the monetary value of the dishonored cheque, and, also, obviously, thereafter, from, whether the monetary value thereof, being exorbitant or excessive, and, if so, it became enjoined, upon the learned trial Court, to thereafter, insist upon the aggrieved to deposit, only a reasonable percentum thereof, as a pre condition, for its proceeding to suspend, the execution of the substantive sentence as became imposed, upon the aggrieved convict by the learned trial magistrate.

5. However, the above principle of proportionality, inter se the value of the cheque amount, and, the direction made upon the convict to deposit 20 per cent of the compensation amount, has been completely breached, in as much as, the learned first appellate court has remained unmindful to the factum, that the value of the dishonored instrument was a sum of Rs. 12 lakh, and, also remained oblivious to the further factum, that the compensation awarded to the complainant, became comprised in a sum rather double the cheque amount.

6. Therefore, since a sum of Rs. 24 lakh was awarded to the complainant by the learned trial judge concerned, as compensation to him, thereupon(s) any ordering qua his depositing 20 % of the compensation amount, for the relevant purpose, was an order rather not within the realm of proportionality, reiteratedly, it became ridden with a vice of arbitrariness.
7. Consequently, it became incumbent upon the learned first appellate court to determine only a reasonable per centum of the cheque amount, and, to thereafter, ask for the making of its deposit, as a imperative pre condition, for the order suspending the execution of substantive sentence of imprisonment, becoming effective.
8. Even the above exercise has not being done, rather, 20 % of the compensation amount has been ordered to be deposited by the convict, as a pre condition for the order suspending the execution of the substantive sentence of imprisonment, taking the fullest effect.
9. The impugned order made is hence outside the principle of proportionality. Therefore, it is set aside.
10. The impugned order is modified to the extent, that the aggrieved convict shall within 6 weeks from today, deposit 10 percent of the cheque amount, as a pre condition for the order suspending the execution of the substantive sentence of imprisonment rather taking effect.
11. Disposed of accordingly.

18.05.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

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