

131

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

CRM-M-23926-2022

Date of decision: 27.05.2022

RAM NIWAS @ SONU

...Petitioner

Versus

AMRINDER PAL SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Kamal Narula, Advocate
for the petitioner.

Mr. Navraj Singh, Advocate
for respondent.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner through an order of 07.03.2022 (Annexure P-1) become convicted for notice of accusation put to him, under Section 138 of Negotiable Instruments Act. He also became sentenced to undergo a substantive sentence of imprisonment lasting upto two years, and, also became directed to pay compensation to the complainant comprised in a sum co-equal to the cheque amount, inasmuch as, Rs.2 lacs, along with interest @ 9% per annum from the date of issuance of cheque uptill the date of making of the verdict.

2. The convict became aggrieved from the above made verdict of conviction, and, consequent therewith sentence (supra), as became imposed upon him, by the learned trial Magistrate concerned, and, constituted criminal appeal bearing No.42 of 2022, before the learned Additional Sessions Judge, Fazilka. Within the above appeal, he filed an application under Section 389 of Cr.P.C., claiming therein relief, that the execution of the above imposed substantive sentence of imprisonment becoming suspended during the pendency of the above appeal. The learned Appellate Court though proceeded to, on

certain conditions allow his claim qua suspension of the execution of substantive sentence of imprisonment, but also imposed upon him, a condition of his depositing 20% of the fine or compensation within 60 days from 17.03.2022.

3. The convict becomes aggrieved from the above order, as carried in Annexure P-4, and, has cast a challenge thereto through his instituting the instant petition before this Court. The learned First Appellate Court concerned, may have struck a balance or proportionality *inter-se* the cheque amount, and, qua its making an insistence, upon the convict to, as a pre-condition for the order suspending the execution of the sentence of imprisonment, attaining the fullest effect, rather his depositing reasonable per centum of the cheque amount.

4. However, the learned Appellate Court, has not borne in mind, the above principle inasmuch as, despite the cheque amount becoming carried in a sum of Rs.2 lacs, it yet insisting that as a pre-condition, for the order, as made by him, hence suspending the execution of the substantive sentence of imprisonment, imposed upon the convict by the learned trial Magistrate, qua yet the petitioner, depositing 20% thereof, rather for the order (*supra*) taking fullest effect. The above per centum of the cheque amount appears to this Court, to be slightly excessive, and, unreasonable, and, also if it is yet insisted to be put into effect, thereupon the very purpose of the order suspending the execution of the substantive sentence of imprisonment, as made through Annexure P-4, would not be served, and, obviously the liberty of the petitioner would become fettered. For ensuring that justice is done, to the convict, and, also for striking the apt proportionality *inter-se* the cheque amount, and, the reasonable per centum thereof to be deposited, as a pre-condition, for the execution of the substantive sentence of imprisonment of order, becoming suspended, and/or, qua the

suspension of the execution of the sentence of imprisonment taking the fullest effect, this Court after making an interference with Annexure P-4, deems it fit, and, appropriate, to direct the petitioner, to deposit 12% of the cheque amount, within six weeks, in the establishment of the learned Magistrate concerned, as a pre-condition, for the order, suspending the execution of the substantive sentence of imprisonment of two years taking the fullest effect.

5. Disposed of accordingly.

27.05.2022

ithlesh

(SURESHWAR THAKUR)
JUDGE

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