

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

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CRM-M-23961-2022

Date of Decision: 27.05.2022

SAPNA DEVI

... Petitioner

Versus

RAJESH KUMAR

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Aditya Sanghi, Advocate with
Ms. Shweta Sanghi, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of impugned order dated 25.03.2022 passed in CRA No.121 of 2020 (Annexure P-1) whereby the learned Appellate Court/Addl. Sessions Judge, Karnal has directed the petitioner to pay 20% of the compensation awarded by the trial Court vide judgment dated 23.01.2020, without providing any reasons for exercising the wide discretionary power under Section 148 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act') arising from complaint case No.NACT-319 of 2017 instituted on 07.10.2017.

Learned counsel appearing on behalf of the petitioner *inter alia* contends that the respondent-complainant had filed a complaint under Section 138 of the N.I. Act against the petitioner on account of dishonour of a cheque bearing No.52860 dated 25.08.2017 amounting to Rs.5,50,000/-. The petitioner was convicted vide judgment dated 23.01.2020 and sentenced vide order dated 31.01.2020 to undergo imprisonment for a period of six

months and to pay an amount of Rs.6,05,000/- as compensation within one month from the date of passing of the judgment.

Aggrieved of the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the Sessions Court, Karnal, which is pending consideration. It is submitted that the petitioner had applied for suspension of sentence before the lower Appellate Court and the sentence has already been suspended by the said Court subject to the petitioner furnishing bail bond in the sum of Rs.50,000/- with one surety in the like amount.

It is argued that the appeal was adjourned from time to time due to COVID-19 pandemic, however, when the matter was taken up, the respondent-complainant failed to make an appearance before the Court and consequently, vide order dated 20.01.2022, the respondent-complainant was proceeded against *ex-parte* and the matter was posted for arguments. Learned counsel for the petitioner further submits that without setting aside the order of *ex-parte* proceedings, the lower Appellate Court has directed the petitioner to deposit 20% of the compensation amount awarded by the trial Court vide impugned order dated 25.03.2022.

Learned counsel for the petitioner further argued that there was no application for seeking the relief of setting aside the order of *ex-parte* proceedings and that there was no application submitted by the respondent-complainant seeking the payment of compensation under Section 148 of the N.I. Act. It is also argued that apart from the above, no time frame has been prescribed by the trial Court or the lower Appellate Court for depositing the said amount. Learned counsel for the petitioner thus contends that the

impugned order being illegal, unlawful and perverse, is liable to be set aside.

I have heard the learned counsel for the petitioner and have gone through the record with their able assistance.

Insofar as the first argument raised by the learned counsel for the petitioner pertaining to the absence of an application seeking setting aside the *ex-parte* order is concerned, the said argument does not inspire confidence. The Criminal Procedure Code does not contemplate *ex-parte* proceedings. Even otherwise, there is nothing as such in law that a party must file an application for setting aside the *ex-parte* order. It is well settled proposition of law that any party can join the proceedings from the stage at which it is as on the date. Such order is required to be sought to be set aside only when some proceedings have already taken place during the interregnum that need to be challenged. There is no such position in the impugned order and as such the same is not required to be challenged. Hence, there is no illegality or perversity in the order passed by the Addl. Sessions Judge, Karnal allowing the respondent-complainant to join the proceedings. There is no such mandate in law that such a course cannot be adopted sans for an application submitted by the party for seeking the *ex-parte* order to be set aside.

Referring to the second argument that there is no application submitted by the respondent-complainant for seeking the compensation in terms of the Section 148 of the N.I. Act, it is evident that from the perusal of said provision that there is no such requirement prescribed in the statutory provisions that the amount of compensation can only be ordered to

be deposited on an application so moved or filed at the behest of the respondent-complainant. The language of the statute, however, empowers the Court to pass such an order requiring an accused to deposit the amount of compensation of any part payment thereof. Such jurisdiction is not mandated in law to be set in motion only on an application moved by the respondent-complainant. Hence, in the absence of a statutory pre-requisite of an application to be moved for invoking the provisions of Section 148 of the N.I.Act, the submission advanced by the counsel for the petitioner is without any force.

Now referring to the submission of the learned counsel for the petitioner that no time frame has been granted by the lower Appellate Court to the petitioner-accused to deposit the amount of compensation so assessed by the trial Court, even though the statutory period contains the period of 60 days to be granted to the petitioner-accused to deposit the amount and with a further period not exceeding 30 days on sufficient cause being shown by the petitioner-accused. The said submission does inspire some confidence. Perusal of the impugned order shows that no time frame has been prescribed by the lower Appellate Court for the petitioner-accused to deposit the amount of compensation.

Taking into consideration the prayer, which finally survives, and also to ensure that the proceedings before the lower Appellate Court are not delayed unnecessarily, this Court does not feel inclined to issue any notice to the respondent-complainant and is disposing of the present petition while granting a period of sixty days from the date of passing of the order for depositing the compensation amount as assessed by the Addl.

Sessions Judge, Karnal vide order under challenge dated 25.03.2022. Being seized of the aforesaid aspect and noticing that the said period of 60 days has already come to an end as on date, learned counsel for the petitioner submits that the statutory provision also contains an additional period of 30 days to be granted to an accused for depositing the compensation amount as assessed by the Court and as such, requests for grant of some additional time for depositing the compensation amount as assessed by the lower Appellate Court.

The request of counsel for the petitioner is accepted. Consequently, an additional period of 30 days as per Section 148 (2) of the N.I. Act is allowed to the petitioner-accused to deposit the 20% of the compensation amount as directed to be deposited by the Addl. Sessions Judge, Karnal vide order dated 25.03.2022.

Needless to mention that the total period of 90 days granted to the petitioner shall commence from the date of passing of impugned order dated 25.03.2022.

Petition stands disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

27.05.2022
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No