

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 25216 of 2022 (O&M)

Date of Decision: 08.8.2022

Jugal Kishore

.....Petitioner

Versus

Anita Narang and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Manu Loona, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

CRM-27582-2022

1. The present application has been filed for preponing the date of hearing of main case.
2. For the reasons recorded in the application, the application is allowed. The main case is preponed, and, is taken up on board for hearing today.

CRM-M-25216-2022

1. The learned Judicial Magistrate Ist Class, Abohar, made a verdict of conviction, on 18.1.2022, upon the present petitioner, in respect of a notice of accusation, put to him, for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The above made verdict, is embodied in Annexure P-1, appended to the present petition.
2. Through a separate sentencing order, drawn by the learned convicting Court, on 18.1.2022, it proceeded to sentence the convict to undergo rigorous imprisonment for a period of two years, and, also directed the convict to pay the compensation, comprised in a sum of Rs. 10 lacs, to the complainant, besides ordered that in case the convict makes default in

redeeming to the complainant, the above compensation amount, thereupon, he shall undergo rigorous imprisonment for a period of two months.

3. The present petitioner became aggrieved from the above made verdict of conviction, and, consequent therewith sentence (supra), as became imposed upon him, by the learned convicting Court, and, preferred an appeal thereagainst, before the learned Additional Sessions Judge, Fazilka.

4. However, the above preferred appeal is a time barred appeal, and, the learned Appellate Court has, through an order drawn on 2.4.2022, made an order for notice to the complainant, being served in respect of an application constituted under Section 5 of the Limitation Act, and, made it returnable for 08.9.2022.

5. Though, along with the appeal, preferred by the present petitioner, against the verdict of conviction, and, consequent therewith sentence, as became imposed, upon him by the learned convicting Court, an application, cast under Section 389 of the Cr.P.C., became appended, seeking the relief of suspending the execution of the sentence of imprisonment (supra), as became imposed, upon the petitioner, by the learned convicting Court, but since as above stated, the apposite appeal is time barred, and, as also as above stated, notice of the application, cast under Section 5 of the Limitation Act, has been ordered to be issued, upon the respondent-complainant, and, has been made returnable on 08.9.2022. In consequence, till the application, cast under Section 5 of the Limitation Act, is decided, rather thereupto, the learned Appellate Court, cannot proceed to register the criminal appeal, nor can proceed to make any valid order, upon the application appended therewith, as constituted under

Section 389 of the Cr.P.C.

6. Be that as it may, since for want of the appeal becoming registered, and, when only thereafter the learned Additional Sessions Judge, Fazilka, would become validly empowered to make a decision, in accordance with law, on the convict's application, cast under Section 389 of the Cr.P.C., thereupon, obviously the sentence of imprisonment, as also the sentence of fine, as imposed, upon the convict would be open for execution, and, as became strived to be executed by the complainant, through the filing of an apposite application, before the learned convicting Court. Though, in sequel thereof, the warrants of arrest have been issued by the learned Judicial Magistrate concerned, but for ensuring that the liberty of the present petitioner is protected, this Court deems it fit, and, appropriate to direct the learned Appellate Court, to forthwith make a decision, in accordance with law, upon the convict's application, cast under Section 5 of the Limitation Act, and, as becomes appended with the appeal, and, also to thereafter forthwith make a decision, upon the convict's application, cast under Section 389 Cr.P.C.

7. It is clarified that till the above decisions are recorded, the learned trial Magistrate concerned, may not enforce the non-bailable warrants, as have been issued by it, against the person, and, also may not till then draw any coercive steps against the petitioner's estate.

8. The petition stands disposed of in the above terms.

(SURESHWAR THAKUR)
JUDGE

August 08, 2022
Gurpreet

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