

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

**CRM-M No. 8711 of 2018
Reserved On: 08.07.2022
Pronounced On: : 13.07.2022**

BALVIR KAUR

..... PETITIONER

Versus

STATE OF PUNJAB AND OTHERS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Argued by: Mr. Saurabh Singla, Advocate
for Mr. Vaneet Kumar Sharma, Advocate
for the petitioner.

Mr. Harpreet Singh Multani, AAG, Punjab
for respondent No. 1.

Mr. S.S. Chatrath, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J.

1. The learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi, through a verdict drawn on 20.01.2018 (Annexure P-1), upon, a criminal complaint bearing CIS No. NACT-2295 of 2013, convicted the accused – petitioner herein, qua notice of accusation, for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short “the Act”).

2. In consequence thereof, through a sentencing order drawn, on 20.01.2018, the learned trial Magistrate concerned, proceeded to impose, upon, the convict, sentence of rigorous imprisonment extending upto a term of two years, and, also made a direction, upon, the convict-petitioner herein to pay an amount of Rs.12,00,000/-, as compensation to the complainant – respondent No. 2 herein.

3. The above made verdict of conviction, and, the consequent

therewith sentence of imprisonment, and, also the awarding of compensation amount to the aggrieved-complainant, became challenged by the convict, through his instituting an appeal there-against, before the learned Additional Sessions Judge, Kapurthala.

4. However, during the pendency of the apposite appeal, as, became preferred by the aggrieved-convict, the latter proceeded to also institute an application cast under Section 389 of the Cr.P.C., rather before the learned Appellate Court concerned. The learned Appellate Court concerned, through an order made thereons, on 16.02.2018 (Annexure P-3), cast the hereinafter extracted directions, upon, the appellant – convict (petitioner herein).

“ *Heard. There are arguable points. Admitted.*

Alongwith appeal, an application for condonation of delay as well as application under Section 389 CrPC has been moved by the appellant seeking suspension of impugned substantive sentence imposed by the Trial Court upon him till disposal of this appeal.

Heard. The disposal of appeal is likely to take some time. Therefore, impugned substantive sentence imposed upon the appellant by the learned trial Court shall remain suspended till the disposal of this appeal, subject to condition that appellant shall deposit 25 % of the total compensation amount as awarded in the judgment dated 20.01.2018 passed by the Learned Illaqa Magistrate with the learned Illaqa Magistrate//Duty Magistrate and subject to furnishing of personal bonds in the sum of Rs. 50,000/- with one surety in the like amount, with undertaking not to leave the country without the prior permission of the Court, to the satisfaction of Illaqa Magistrate/Duty Magistrate within 15 days from the date of passing of this order, failing which this order shall cease to have its effect. ”

5. A reading of the above extracted order reveals, that the learned Appellate Court concerned, had ordered for suspending the

execution of the sentence of imprisonment, imposed upon, the appellant by the Convicting Court, subject to deposit of 25% of the compensation amount within 15 days from the passing of the order, and, further subject to furnishing personal bonds in the sum of Rs. 50,000/- with one surety in the like amount before the Convicting / Duty Magistrate within the afore period.

6. The challenged condition precedent, imposed upon, the convict by the learned Appellate Court, upon, the convict's application, is, unreasonable. Therefore, the quantum of the challenged deposit, inasmuch as, it directing the petitioner to deposit 25% of the cheque amount, rather becomes modified to a deposit of 5 % of the cheque amount being made by the petitioner. The reason for making the above conclusion becomes spurred, from the factum, that since apart, from the appellate Court insisting, upon, the convict to deposit a reasonable percentum of the cheque amount, as a pre-condition for the order suspending the execution of the sentence of imprisonment, becoming enforceable, rather a remedy, inasmuch as, the supplemental thereto remedy enshrined under Section 148 of the N.I. Act, provisions whereof stand extracted hereinafter, being also available to the aggrieved-complainant, wherethroughs, during the pendency of the apposite appeal, he can claim determination(s), and, also interim realization(s) of 20 % of the compensation amount.

“ 148 Power of Appellate Court to order payment pending appeal against conviction

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty percent of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) *The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.*

(3) ***The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:***

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant. ”

7. Consequently, when in the discretion of the appellate Court, it may also determine an ad interim apposite amount of 20 %, rather as a compensatory measure to the complainant, if so, if an order with the above condition, is also made upon convict, upon his application cast under Section 389 Cr.P.C., thereupon the convict may become put to exacting, and, immense financial pain, and or, he would also, untenably become doubly jeopardized. Necessarily, hence the above harsh and, exacting condition requires, its being, through modification thereof, rather being undone.

8. In sequel, the challenged condition requires modification, and, the petitioner is directed to deposit 5 % of the Cheque amount, within four

weeks before the learned Court concerned, but leaving liberty to the complainant to constitute, an, application under Section 148 of N.I. Act, before the appellate Court concerned.

9. In case, the above application, is filed, then it is open to the learned appellate Court concerned, to pass just orders thereons, but in accordance with law, and, bearing in mind the above principle of inter-se proportionality.

10. Disposed of accordingly.

July 13, 2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes / No</i>
<i>Whether Reportable</i>	<i>Yes / No</i>