

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 35351 of 2022

Date of Decision: 09.8.2022

Surinder Kumar

.....Petitioner

Versus

Jaswinder Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Rahul Jaswal, Advocate
for the petitioner.

SURESHWAR THAKUR, J. (ORAL)

1. The learned Judicial Magistrate Ist Class, Rajpura, through a verdict drawn on 1.6.2022 (Annexure P-2), upon, a criminal complaint bearing CIS No. COMA-362-2018, 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 1.6.2022, 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. 8,00,000/-, as compensation to the complainant– respondent 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, Patiala.

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 15.6.2022 (Annexure P-5), cast the hereinafter extracted directions, upon, the appellant–convict (petitioner herein).

“ Heard. As is evident on account of admission of the appeal its disposal is likely to take time. Accordingly substantive sentence awarded to the appellant by the trial Court is suspended till the disposal of the appeal subject to furnishing of personal bonds by the appellant/accused in the sum of Rs. 2 lakhs with one surety in the like amount to the satisfaction of trial court/Duty Magistrate within 25 days. Further the recovery of compensation is stayed subject to depositing or 20% amount of total compensation equivalent to cheque amount by the appellant with the trial Court within 2 months from today, failing which the trial Court shall be at liberty to initiate recovery proceedings for recovery of the amount of compensation. The amount if any deposited by the appellant shall not be disbursed till the disposal of this appeal. The interim application stands disposed of accordingly.”

5. A reading of the above extracted order reveals, that though 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 furnishing of personal bonds in the sum of Rs. 2,00,000/- with one surety in the like amount before the Convicting/Duty Magistrate within 25 days, and, also stayed the recovery of compensation, but made the above order, subject to deposit of 20% of the total compensation equivalent to cheque amount, within two months from the passing of the order.

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 20% 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 deposit1 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.

(SURESHWAR THAKUR)
JUDGE

August 09, 2022

Gurpreet

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