

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

CRM-M No.38988 of 2021 (O&M)
Date of Decision: 18.10.2022

Shrikant Verma
.....Petitioner.
Versus
State of Haryana & Anr.
.....Respondents.

CRM-M No.37044 of 2021 (O&M)

Shrikant Verma
.....Petitioner.
Versus
State of Haryana & Anr.
.....Respondents.

CRM-M No.34111 of 2020 (O&M)

Shrikant Verma
.....Petitioner.
Versus
State of Haryana & Anr.
.....Respondents.

CORAM: HON’BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Shailendra Jain Senior Advocate with
Mr. Priyavrat Parashar, Advocate
for the petitioner.

Mr. Apoorv Garg, Deputy Advocate General,
Haryana, for respondent No.1-State.

Mr. Ankur Mittal, Advocate with
Ms. Kuldeep Kaur, Advocate,
Ms. Neelam Chaudhary, Advocate and
Mr. Shivam Garg, Advocate,
for respondent No.2.

MEENAKSHI I. MEHTA, J.

All the three above-mentioned petitions are being taken up together for their adjudication as the genesis thereof lies in the same Criminal Complaint case.

2. As per the brief factual-matrix culminating in the filing of these petitions by invoking the extra-ordinary jurisdiction of this Court under Section 482 Cr.P.C, respondent No.2-complainant (here-in-after to be referred to as '**respondent No.2**') filed the Criminal Complaint bearing NACT No.2227 of 2016 against the petitioner-convict-appellant (here-in-after to be referred to as '**the petitioner**') under Section 138 of the Negotiable Instruments Act (for short '**the NI Act**') while alleging therein that the petitioner had taken the financial assistance from him (respondent No.2) to the tune of Rs.1.14 crore. In discharge of his afore-said liability, the petitioner issued a cheque dated 10.05.2016 worth Rs.1.45 crore in his (respondent No.2's) favour. However, when presented in the concerned Bank for its encashment, the said cheque was dishonoured with the remarks "Funds Insufficient" vide the memo dated 06.08.2016. Then, he sent a legal notice dated 05.09.2016 to the petitioner, through registered post, asking him therein to pay the cheque amount but the petitioner failed to do the needful in this regard.

3. Respondent No.2 led his preliminary evidence and vide the order dated 03.02.2017, the trial Court summoned the petitioner to face the trial under the afore-mentioned provisions. In pursuance of the said order, the petitioner appeared in the Court and the notice of accusation was,

accordingly, served to him and he pleaded not guilty to the same and claimed trial. Thereafter, respondent No.2 concluded his evidence and then, the petitioner was examined under Section 313 Cr.P.C to explain the circumstances appearing against him in the evidence on the record wherein he stated that the above-said cheque had been misused by respondent No.2. He also examined three witnesses in his defence evidence. After hearing learned counsel for both the parties, the trial Court, vide the judgment as passed on 05.03.2020, held the petitioner guilty for committing the offence under Section 138 of the NI Act and vide the order dated 07.03.2020, he was sentenced to undergo the rigorous imprisonment for a period of one year and six months and was ordered to pay the amount of Rs.2,17,50,000/- to the complainant as compensation under Section 357(3) Cr.P.C.

4. Feeling aggrieved by the afore-said judgment and the order on sentence, the petitioner filed an appeal and during the pendency thereof, both the parties arrived at a compromise/settlement qua their dispute and made their statements (annexed as P-3 and P-4 in **CRM-M No.38988 of 2021**) in the Court of the Additional Sessions Judge, Panipat (for short '**the Appellate Court**') on 09.04.2021 and in view of the same, the Appellate Court passed the order Annexure P-5 on the same day. However, the petitioner moved application Annexure P-14 for seeking the modification/clarification/rectification of the said order (Annexure P-5) and vide order Annexure P-16 as passed on 27.08.2021, the Appellate Court disposed of the above-said application while clarifying that "**in case of non-payment of the settled amount, the respondent shall be entitled to claim the balance**

amount as per the order of learned trial Court dated 05.03.2020/07.03.2020.” The petitioner has assailed this order in **CRM-M No.38988 of 2021**.

5. It is worth-while to mention here that the petitioner moved another application (annexed as P-11 in **CRM-M No.37044 of 2021**) before the Appellate Court for seeking the refund of the amount of Rs.50 lac as paid by him to respondent No.2, while averring that as per the terms of the settlement arrived at between the parties on 09.04.2021, he (petitioner) was required to pay the total sum of Rs.1.5 crore to respondent No.2, in three instalments of Rs.50 lac each, on 30.04.2021, 31.05.2021 and 10.06.2021 and he had paid the first instalment to him accordingly but thereafter, due to the outbreak of Pandemic Covid-19, the appeal was adjourned to 06.10.2021 and then, respondent No.2 moved an application for seeking its preponement and on 02.07.2021, he (respondent No.2) made a statement expressing his unwillingness therein to adhere to the said settlement despite his having received the said first instalment in pursuance thereof. Vide the order dated 27.08.2021 (Annexure P-12), the Appellate Court dismissed the afore-said application and the petitioner has preferred **CRM-M No.37044 of 2021** praying therein for the quashing of the same.

6. It is also pertinent to mention here that vide the order dated 26.06.2020 (annexed as P-3 in **CRM-M No.34111 of 2020**), the Appellate Court admitted the petitioner (as appellant) to bail on his furnishing the bail bonds in the sum of Rs.one (01) lac with one surety in the like amount, while directing him to deposit an amount of Rs.43,50,000/-, i.e 20% of the

compensation amount, in the form of the bank draft in favour of respondent No.2, within a period of 30 days from that day. The petitioner has filed **CRM-M No.34111 of 2020** to lay challenge to the said order.

7. I have heard Mr. Shailender Jain, learned Senior counsel for the petitioner as well as learned State counsel for respondent No.1 and Mr. Ankur Mittal, Advocate, learned counsel for respondent No.2, in all these petitions and have also perused the files carefully.

CRM-M Nos.38988 and 37044 of 2021 (O&M)

8. Both these petitions are being taken up together for discussion as the matters involved therein are inter-linked and the adjudication of one petition shall have bearing on the decision of the other one.

9. Learned Senior counsel for the petitioner has pointed out that the petitioner and respondent No.2 had settled their dispute before the Appellate Court vide the statements Annexures P-3 and P-4 respectively (so annexed in **CRM-M No.38988 of 2021**) and the Appellate Court had passed the following order (Annexure P-5) on 09.04.2021:-

“Today the case was fixed for making payment. Vide separate statement recorded today, appellant and respondent submitted that they have entered into compromise as per which appellant shall give Rs.1.5 crore to respondent in three equal instalments of Rs.50 lakhs each payable on 30.04.2021, 31.05.2021 and 10.06.2021, failing which the respondent shall be entitled to claim cheque amount along-with interest. In view of the afore-said statements, the case is adjourned to 30.04.2021 for making payment of Rs.50 lac by appellant to respondent”.

and he has contended that the petitioner moved an application Annexure P-14 for seeking clarification of the said order (Annexure P-5) but the Appellate Court passed the above-discussed order Annexure P-16 on the same while erroneously relying upon Annexures P-12 and P-13, the copies of the respective affidavits of the petitioner and respondent No.2, despite the fact that in their afore-mentioned statements (Annexures P-3 and P-4), they had not referred to these affidavits.

10. Per-contra, learned counsel for respondent No.2 has argued that the above-referred statements of the petitioner and respondent No.2 had, in fact, been recorded by the Appellate Court on 09.04.2021 on the basis of their afore-said affidavits, i.e Annexures P-12 and P-13 only, as sworn by them on that very day and therefore, the Appellate Court has rightly taken the same into consideration while passing the impugned order Annexure P-16.

11. Though, the affidavits Annexures P-12 & P-13 do not find mention in the above-discussed statements of both the parties (Annexures P-3 & P-4) as recorded by the Appellate Court on 09.04.2021 but it is again worth-while to point it out here that throughout in the petition (**CRM-M No.38988 of 2021**), the petitioner has nowhere denied the factum of his and respondent No.2's having sworn their said respective affidavits and rather, in para No.13 therein, he has categorically pleaded that on 17.08.2021, he had moved an application (before the Appellate Court) for seeking the production of the original compromise and respondent No.2, instead of producing the same, had placed the said affidavits on the file. However, he

has not come forward with any fair and candid version regarding the alleged written compromise nor has even placed the copy thereof on the record in the present petition. In such an eventuality, it does not lie in his (petitioner's) mouth to challenge the order Annexure P-16 on the afore-said score.

12. Learned Senior counsel for the petitioner has, further, pointed out that on 20.09.2021, this Court had passed the following order in **CRM-M No.38988 of 2021:-**

“Heard through video conferencing.

Learned Senior counsel for the petitioner contends that respondent No.2 has preferred a complaint under Section 138 of the Negotiable Instruments Act, 1881 as the cheque issued by the petitioner for a sum of Rs.1,45,00,000/- had been allegedly dishonoured. The petitioner has been convicted by the trial Court and directed to pay a sum of Rs.2,17,50,000/- as compensation. The petitioner had preferred an appeal and a settlement was arrived at between the petitioner and respondent No.2 for a sum of Rs.1,50,00,000/- before the Appellate Court on 09.04.2021 (Annexure P-5). The petitioner had paid first instalment of Rs.50 lacs to respondent No.2 through demand draft dated 26.04.2021. The petitioner was diagnosed with covid-19 on 10.05.2021 and therefore, the outstanding amount in terms of the settlement could not be paid. He further contends that the petitioner is ready and willing to deposit the settled amount in two instalments with Rs.50 lacs payable by 30.09.2021 and Rs.50 lacs payable by 09.10.2021 along with interest @ 12% p.a for the delayed

period of four months and he shall make the payment through demand drafts in favour of respondent No.2.

Issue notice to the respondents.

At the asking of the Court, Mr. Deepak Bhardwaj, DAG, Haryana, accepts notice on behalf of respondent No.1.

Mr. Rajiv Kataria, Advocate, has put in appearance on behalf of respondent No.2 and states that the matter had earlier been settled and the petitioner had defaulted on the payment. He, however, submits that he has received instructions from respondent No.2 that he is willing to settle the matter with the petitioner in terms of the afore-noted offer made by learned counsel for the petitioner.

List on 12.10.2021.

A photocopy of this order be placed on the file of connected case”.

and he has also referred to CRM No.33228 of 2021 moved by the petitioner in **CRM-M No.38988 of 2021** for seeking permission to deposit the Demand Draft worth Rs.50 lac with the Registrar of this Court in pursuance of the above-mentioned order and he has, then, pointed out that however, respondent No.2 moved an application bearing CRM No.31901 of 2021, in **CRM-M No. 37044 of 2021** with a prayer to recall the afore-quoted order dated 20.09.2021 so as to clarify that he (respondent No.2) was not ready and willing to settle the matter in accordance with the terms of the offer made by the petitioner therein and he has contended that the earlier settlement/compromise, as arrived at between the parties before the Appellate Court on 09.04.2021, stands subsumed in the settlement as

reflected in the said order dated 20.09.2021 and it is respondent No.2 who has resiled from abiding by the above-mentioned settlement/compromise as arrived at between him and the petitioner before this Court and resultantly, the culpability of the petitioner qua the afore-said offence has come to an end and now, at the most, the terms and conditions of the above-referred subsequent settlement, as described in the order passed on 20.09.2021, can be enforced.

13. Learned Senior counsel for the petitioner has, further, contended that due to some unavoidable circumstances, the petitioner could not pay/deposit the second and third instalments of the settlement amount on 31.05.2021 and 10.06.2021 respectively, in compliance of the settlement as arrived at between the parties on 09.04.2021 before the Appellate Court and respondent No.2 made a statement there on 02.07.2021 (annexed at page No.56 in **CRM-M No.37044 of 2021**), to the effect that the petitioner had failed to pay the settlement amount on the above-stipulated dates and in case, he (petitioner) did not want to pay the cheque amount along-with the interest till that day, then the appeal might be decided on merits and in view of the afore-discussed refusal on the part of respondent No.2 to accept the remaining instalments in terms of the said settlement dated 09.04.2021, the petitioner was entitled to seek the refund of the amount of Rs.50 lac paid/deposited by him towards the first instalment in compliance thereof but however, vide the impugned order dated 27.08.2021 (annexed as P-12 in **CRM-M No.37044 of 2021**), the Appellate Court has wrongly dismissed the application Annexure P-11 as moved by the petitioner for this purpose.

14. To buttress his contentions, learned Senior counsel for the petitioner has placed reliance upon **M/s Gimpex Private Limited vs. Manoj Goel {Criminal Appeal No.1068 of 2021 (Arising out of SLP (Criminal) No.6564 of 2019)}(SC); Meters and Instruments Private Limited and Another vs. Kanchan Mehta (2018)1 Supreme Court Cases 560(SC); Dayawati vs. Yogesh Kumar Gosain (2017)4 DLT (Cri) 164 (DB) (Delhi); Damodar S.Prabhu vs. Sayed Babalal H. (2010)5 Supreme Court Cases 663 (SC); M/s Skyline Hospitality and Township Pvt. Ltd. vs. State Bank of India and Anr. 2016 SCC OnLine Del 582 (Delhi); Balwinder Singh and others vs. Baljit Singh 2012 SCC OnLine P&H 11899 (P&H); Roop Lal vs. Presiding Officer, Labour Court, Amritsar & Another 2009 SCC OnLine P&H 9818 (P&H); Santosh vs. Durga Prasad (2009) 164 DLT 271 (Delhi) and Hari Shankar vs. Ram Swaroop, Civil Revision No.486 of 1966 Decided on 13.02.1967 (Rajasthan).**

15. However, learned counsel for respondent No.2 has argued that the petitioner himself had failed to abide by the terms and conditions of the settlement dated 09.04.2021 as he did not pay/deposit the second and third instalment of the agreed amount on the stipulated dates and also did not comply with the order dated 20.09.2021 as he did not include the amount of the interest in the Demand Draft, as mentioned therein and it being so, both the above-detailed orders dated 27.08.2021 as impugned in the instant petitions are perfectly legal and logical and it being so, both these petitions deserve dismissal.

16. I do not find any force in the contentions as raised by learned

Senior counsel for the petitioner because although, the petitioner had deposited the first instalment amounting to Rs.50 lac, in pursuance of the said settlement/compromise arrived at between the parties on 09.04.2021 but concededly, he failed to pay/deposit the remaining two instalments of Rs.50 lac each on the agreed dates, i.e on 31.05.2021 and 10.06.2021. Thus, it is explicit that it was the petitioner who had defaulted in complying with the terms and conditions of the said compromise/settlement and it has categorically been mentioned in Para No.3 of his affidavit Annexure P-12 (annexed in **CRM-M No. 38988 of 2021**) that in case of such default on his part, he (petitioner) would be bound by the decision of the Court dated 05.03.2020/07.03.2020 and to pay the money to respondent No.2 in accordance therewith. It will not be out of place to mention here that in the corresponding para of his affidavit Annexure P-13, respondent No.2 had also made depositions to the same effect.

17. So far as the factum regarding the offer made by the petitioner, as detailed in the order dated 20.09.2021 and its acceptance by respondent No.2 (through his counsel) and the subsequent unwillingness on the part of respondent No.2 to abide by the same, is concerned, it is again pertinent to mention here that though the petitioner has preferred the afore-said CRM No.33228 of 2021 for seeking permission to deposit the Demand Draft of Rs.50 lac but the fact remains that along-with the said amount, he was also required to pay/deposit the interest @ 12% p.a for the period of delay, i.e four months, in compliance of the said order and the amount of the said interest has not been included in the above-said Demand Draft. To add to

it, the second instalment of Rs.50 lac, along-with the interest, was payable by the petitioner till 09.10.2021 as specifically mentioned in the afore-said order but however, there is nothing on the record to show that he had ever made any offer to pay/deposit the same accordingly, despite the fact that the above-referred application was pending adjudication till that date. Thus, it becomes quite explicit that it is the petitioner himself who has failed to comply with even the terms and conditions of the subsequent settlement described in the afore-said order as passed by this Court.

18. The observations, as made in **M/s Gimpex Private Limited (supra), Meters and Instruments Private Limited and Another (supra); Dayawati (supra), Damodar S.Prabhu (supra), M/s Skyline Hospitality and Township Pvt. Ltd. (supra), Balwinder Singh and others (supra), Roop Lal (supra), Santosh (supra)** and **Hari Shankar (supra)**, are of no avail to the petitioner because the facts and circumstances of the case in hand are quite distinguishable from those of the cited above.

In **M/s Gimpex Private Limited (supra)**, the compromise had been arrived at between the parties during the pendency of the first set of the Criminal Complaints moved on account of dishonour of the cheques and the cheques issued in pursuance of the said compromise/settlement had also been dishonoured and the second set of the Criminal Complaints had been filed whereas in the present case, the petitioner has already been convicted and awarded the sentence in the Criminal Complaint filed by respondent No.2 against him.

In **Meters and Instruments Private Limited and Another**

(supra), appellant No.2 had made a statement during the pendency of the Criminal Complaint itself that he was ready to make the payment of the cheque amount but the complainant had declined to accept the Demand Draft whereas in the instant case, the petitioner has already been convicted and awarded punishment and as discussed earlier, he himself has committed default in complying with the terms and conditions of the settlement dated 09.04.2021 arrived at before the Appellate Court as well as the one as mentioned in the order dated 20.09.2021 passed by this Court.

Then, in Dayawati (supra) also, the legal permissibility of reference of the complaint cases under Section 138 of the NI Act for the amicable settlement through mediation, the procedure to be followed upon the settlement and the legal implications of breach of the mediation settlement, were the subject matters before the Court for adjudication whereas in this case, the dispute between the parties has not been referred for mediation at any stage of the proceedings in the Complaint Case.

In Damodar S.Prabhu (supra), the guidelines have been laid down for compounding of the offence under Section 138 of the NI Act, including the pre-condition qua the deposit of certain percentages of the cheque amount as per the different stages/levels of the pendency of the case but however, in the present case, the petitioner has not moved any application in the Court for seeking the compounding of the offence in the relevant complaint case.

Further in M/s Skyline Hospitality and Township Pvt. Ltd. (supra), the observations were made in a matter/dispute relating to the

tenancy qua the disputed premises and qua the agreement to sell the same whereas it is not so in the instant case.

In **Balwinder Singh and others (supra)**, the petitioner had offered the cheque amount on the first date of hearing in the Criminal Complaint before the trial Court so as to get the offence compounded and the complainant had refused to accept the same but in the present case, as discussed earlier, the petitioner himself has not complied with the terms of the settlement arrived at between the parties on both the afore-mentioned occasions.

Then, in **Roop Lal (supra)**, the observations were made while dealing with the reference pertaining to the industrial dispute raised by the petitioner therein but in the instant case, the petitioner has already been held guilty under Section 138 of the NI Act and he has not complied with the terms and conditions of the subsequent settlement, as discussed above.

Further, in **Santosh (supra)** also, the petitioner-wife had accepted the part payment of the settlement amount and had, later-on, resiled from abiding by the settlement whereas in this case, as mentioned in the preceding paragraphs, the petitioner himself has not adhered to both the said settlements.

Lastly, in **Hari Shankar (supra)**, the plaintiff had refused to accept the offer made in the civil suit for recovery of money on the basis of a promissory note wherein the defendant had denied the execution as well as the receipt of consideration of the pronote whereas, as discussed earlier, the facts and circumstances of this case are entirely different.

19. As a sequel to the fore-going discussion, it follows that both the petitions in hand, being *sans* any merit, deserve dismissal. Resultantly, the same stand dismissed. All the miscellaneous applications moved therein also stand disposed of accordingly.

CRM-M No.34111 of 2020 (O&M)

20. The petitioner is aggrieved by the order Annexure P-3 passed by the Appellate Court on 26.06.2020 in view of Section 148 of the NI Act, while admitting him to bail (for the suspension of sentence awarded to him) subject to the condition of the deposit of 20% of the compensation amount, i.e Rs.43,50,000/-, in favour of respondent No.2 by way of the Bank Draft, within a period of 30 days from that day.

21. Learned Senior counsel for the petitioner has contended that the afore-discussed direction is irrational and unreasonable but again, it is pertinent to mention here that Hon'ble the Supreme Court has categorically observed in **Surinder Singh Deswal alias Colonel S. S. Deswal and others vs. Virender Gandhi (2019)11 Supreme Court Cases 341** that "*Section 148 of the NI Act, as amended w.e.f 01.09.2018, shall be applicable to appeals against the order of conviction for offence under Section 138 of the Act even where the criminal complaints had been filed prior to the amendment in said provision and the power under Section 148 can be exercised either on the application of the complainant or on the application for suspension of the sentence and word "may" used in the said provision is generally to be construed as "rule" or "shall" and the Appellate Court must ordinarily order the deposit of minimum 20% of the compensation or*

*fine amount imposed by the trial Court.” These observations clinch the entire controversy involved in the present petition and in view of the same, it has to be held that the impugned order Annexure P-3 passed by the Appellate Court in view of Section 148 of the NI Act, is perfectly legal and does not call for any interference by this Court. Moreover, it has also been observed by the Apex Court in the judgment rendered in another set of the Criminal Appeals between the same parties, as reported in 2020(2) SCC 514, that “*the Court which has suspended the sentence on a condition, after noticing the non-compliance of the condition, can very well hold that the suspension of sentence stands vacated due to non-compliance*”. Resultantly, the instant petition, being devoid of any merit, is hereby dismissed and all the miscellaneous applications, as preferred therein, also stand disposed of accordingly.*

18th October,2022
seema

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>