

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.
123

CRM-M-42812 of 2021

Date of decision:8.3.2022

Gurdev Singh

... Petitioner

versus

Bhola Nath

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Ashok Bhardwaj, Advocate,
for the petitioner

...

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner seeks quashing of the orders dated 13.1.2021(Annexure P-2) and 28.9.2021 (Annexure P-4), passed by the learned Additional Sessions Judge, Sangrur, vide which he has been directed to deposit 20% of the total amount of compensation awarded by the learned trial court in Complaint Case no.NACT-215/2017, dated 30.3.2017, filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881.

He also seeks a stay on the operation of the impugned orders during the pendency of the petition.

In the alternative, he further seeks two months' time to comply with the orders dated 13.1.2021 and 28.9.2021.

On 11.10.2021, the following order had been passed by this court:-

“Case heard via video conference.

Learned counsel for the petitioner relies upon a judgment of a co-ordinate bench of this court in Vivek Sahni

***and another vs. Kotek Mahindra Bank Ltd., 2019 (4) RCR (Crl.) 614**, wherein in answer to the second question framed by the court, it was held that there is no provision in Section 148 of the Negotiable Instruments Act, 1881, for recovery of the defaulted amount against an appellant (with the words used being fine or compensation), and therefore, default in payment of a certain percentage of the compensation, would not ipso facto result in cancellation of the bail granted by that court.*

*However, upon query, learned counsel for the petitioner has also very fairly brought to the notice of this court a judgment of the Supreme Court in **Surender Singh Deswal and others vs. Virender Gandhi and another**, 2020(1)RCR (Crl.)506, wherein the judgment in **Vivek Sahnis' case** (supra), was duly considered by their Lordships and it was held as follows:-*

18. The High Court is right in its opinion that question No.2 as framed in Vivek Sahni's case was not correctly considered. When suspension of sentence by the trial court is granted on a condition, non-compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing noncompliance of the condition can very well hold that the suspension of sentence stands vacated due

to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.

Learned counsel for the petitioner submits that, however, in the present case the petitioner not having been given even one chance to deposit the amount of compensation as was directed by the appellate court vide its order dated 13.01.2021, and his bail having been cancelled on 28.09.2021 (copy Annexure P-4), he should have been provided at least one opportunity to do the needful.

He undertakes to deposit 20% of the amount of compensation as had been directed vide the order Annexure P-2, within a period of two months from today.

Notice of motion, returned on 17.12.2021.

In the meanwhile, operation of the impugned order dated 28.09.2021, shall remain stayed till the next date of hearing.

It is directed that upon the petitioner depositing the amount of compensation as was ordered by the appellate court vide its order dated 13.01.2021, by 10.12.2021, his sentence

shall be deemed to have continued to remain suspended in terms of the said order, but with it made absolutely clear that if the said deposit is not made positively before 10.12.2021, this order shall be deemed to have not been passed, with the impugned order dated 28.09.2021 passed by the learned appellate court, to take effect from 11.12.2021.”

Thereafter though the respondent-complainant appeared in person on 17.12.2021, he never appeared thereafter and is also not present today.

In any case, learned counsel for the petitioner submits that the petitioner unfortunately having expired, and the impugned order being one by which it has been held that if the petitioner does not deposit 20% of the amount of compensation awarded by the trial court, the order suspending his sentence would stand vacated, obviously that order has been rendered infructuous as regards suspension of the sentence of the late petitioner.

He therefore submits that he does not press this petition, with the legal heirs of the petitioner to take their remedies before the appellate court, if they so wish.

Dismissed as withdrawn as above.

8.3.2022
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No