

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

132

CRM-M-50580-2022
Date of decision : 08.12.2022

Sundar Rajan

.... Petitioner

Versus

Jasbir Kaur and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Deepak Girotra, Advocate for the petitioners.

Mr. Vaibhav Sehgal, Advocate for respondent No.1.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 482 read with Section 444 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of impugned order dated 25.07.2022 (Annexure P-12) passed by learned Judicial Magistrate First Class, Ludhiana, whereby the application filed by the petitioner under Section 444 of the Cr.P.C. for discharging him as a surety of accused/respondent No.2 in Criminal Complaint No.COMA/4800+4801 of 2014 titled as 'Jasbir Kaur Vs. Mrs. Kalai Selvy Rasiah' has been dismissed.

Power of attorney has been filed by learned counsel for respondent No.1 in the Court today which is taken on record.

Brief facts of the case are that respondent No.1 preferred 04 complaints against respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881 with the allegations that the cheques issued by respondent No.2 got dishonoured upon presentation. On his non-appearance before the Trial Court, respondent No.2 was declared

proclaimed offender on 09.05.2017 and she was arrested on 12.02.2018 and sent to judicial custody. The bail applications filed by respondent No.2 was dismissed by the Trial Court. Thereafter, she approached this Court and filed 04 petitions bearing No. CRM-M-31362, 31409, 31414 and 31423 of 2018. The petitioner stood as surety of respondent No.2 and ready to deposit Rs.1 crore before the Trial Court for grant of bail to respondent No. 2. The Coordinate Bench of this Court allowed the above-said petitions vide order dated 30.08.2018 and granted bail to respondent No.2 subject to deposit of Rs.1 crore with the Trial Court. Aggrieved against the above-said order, respondent No.2 preferred SLP (Crl.) No.8618 of 2018 before the Hon'ble Supreme Court in which Hon'ble Supreme Court directed to deposit an amount of Rs.50 lakhs instead of Rs.1 crore. The present petitioner submitted 02 demand drafts amounting to Rs.49,85,840/- and Rs.14,160/- respectively (total amounting to Rs.50 lakhs) before the Trial Court, upon which the Trial Court released respondent No.2 on bail. Thereafter, some disputes raised between the petitioner and respondent No.2 and the petitioner has filed application under Section 444 of the Cr.P.C. before the Trial Court for discharging him as surety of respondent No.2 which was dismissed by the Trial Court vide impugned order dated 25.07.2022.

Learned counsel for the petitioner submits that the petitioner stood as surety of respondent No.2, who was penniless and resident of Tamil Nadu, in a good faith and deposited the amount of Rs.50 lakhs before the Trial Court in the shape of demand drafts. When respondent No.2 filed criminal case against the present petitioner by levelling serious allegations, it became necessary for the petitioner to

get himself released as a surety of respondent No.2 and get back the surety amount. The Trial Court had wrongly dismissed the application filed under Section 444 by the petitioner observing that the petitioner submitted security for respondent No.2 and not surety and he cannot be discharged by exercising legal provision of Section 444 of the Cr.P.C. In the orders passed by this Court and Hon'ble Supreme Court, there is no mention of any word as 'security' and the said orders were passed in order to get respondent No.2 released on bail. Since, respondent No.2 is already in judicial custody, the petitioner has rightly submitted the application before the Trial Court for discharging him as a surety of respondent No.2. The impugned order has been passed only on the basis of surmises and the same is against the provisions of law. Therefore, the same may be quashed.

On the other hand, learned counsel for respondent No.1 has opposed the present petition and submits that on 30.08.2018, on instructions of petitioner-Sunder Rajan, who is cousin of respondent No.2, learned counsel for respondent No.2 stated before this Court that accused is penniless, her husband has also expired and she can arrange some money for payment to respondent No.1 in case she is bailed out. In the meantime, her relatives are ready to deposit Rs.1 crore before the Trial Court for grant bail to respondent No.2 and was accordingly ordered by this Court. The amount of Rs.1 crore was reduced to Rs.50 lakhs by Hon'ble Supreme Court. The petitioner was agreed to deposit Rs.50 lakhs for payment to respondent No.1. Accordingly, respondent No.1 has not opposed the bail application filed by respondent No.2. Hon'ble High Court while granting bail to respondent No.2 ordered that

amount deposited on behalf of respondent No.2 shall be converted in the shape of STDR in some nationalized bank fetching maximum rate of interest so as to save loss of interest to any party whosoever shall be entitled for the same. The petitioner submitted security for accused and not surety. Therefore, the petitioner cannot withdraw the said amount. The application filed by the petitioner was rightly dismissed by the Trial Court.

I have heard learned counsel for the parties and gone through the paper-book.

The Coordinate Bench of this Court vide order dated 30.08.2018 passed in CRM-M-31362-2018 (O&M) granted bail to respondent No.2. The relevant part of the said order reads as under:-

“Considering overall facts and circumstances, but without expressing any opinion on the merits of the case, trial Court is directed to grant bail to the petitioner subject to deposit of ₹1.00 crore (One Crore only) by her relatives and furnishing adequate personal bonds to the satisfaction of the trial Court along with undertaking by at least two close relatives of the petitioner binding themselves with all consequences thereof, with documentary proof of their immovable properties having value beyond the disputed amount, situated in India, duly certified by the concerned local revenue authorities.

The amount deposited on behalf of the petitioner shall be converted by the trial Court in the shape of some STDR in some nationalised bank fetching maximum rate of interest so as to save loss of interest to any of the parties, whosoever shall be held entitled for the same.”

The above-said order was modified by Hon'ble Supreme Court vide order dated 25.10.2018 passed in SLA (CrI.) Nos.8165-8168-2018. The relevant part of the said order reads as under:-

“Learned counsel appearing for the petitioner submits that the amount of Rs.50 lakhs is ready to be deposited and the Demand Drafts in that behalf have also been taken out.

He further submits that the second part of the conditions imposed by the High Court may be relaxed till the matter is considered by this Court.

We see force in the submission of the learned counsel for the petitioner and direct that upon deposit of Rs.50 lakhs, the petitioner shall be entitled to the benefit of being admitted to bail. The trial Court shall release the petitioner on bail without insisting on the second set of conditions imposed by the High Court.

This order is in modification of the earlier order passed by this Court on 28.09.2018.”

In compliance with the above-said order of the Hon'ble Apex Court, the petitioner has submitted 02 demand drafts amounting to Rs.49,85,840/- and Rs.14,160/- respectively (total amounting to Rs.50 lakhs) in the name of Civil Judge, Senior Division, Ludhiana, on which respondent No.2 was released on bail vide order dated 26.10.2018 passed by the Trial Court.

Keeping in view the facts and circumstances of the case and orders dated 30.08.2018 and 25.10.2018 passed by the Coordinate Bench of this Court and Hon'ble Supreme Court, respectively, I am of the considered view that the amount of Rs.50 lakhs deposited by the petitioner is in the nature of security and not surety and he cannot be discharged by exercising legal provisions of Section 444 of the Cr.P.C.

Accordingly, the present petition is dismissed.

08.12.2022

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No