

CRM-M-859 of 2023

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

CRM-M-859 of 2023
Date of decision: 09.01.2023

Jagdish Ram

.....Petitioner

versus

Manoj Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Rhythem Bajaj, Advocate, for the petitioner.

NAMIT KUMAR, J. (ORAL)

Petitioner has approached this Court by filing the present petition under Section 482 Cr.P.C. impugning the order dated 09.12.2022 (Annexure P-2) passed by the Court of learned Additional Sessions Judge, Fazilka, in Criminal Appeal No.345/2022 titled as “Jagdish Ram v. Manoj Kumar” in complaint case No.NACT 1098/2017 dated 20.07.2017 titled as “Manoj Kumar v. Jagdish Ram” whereby while suspending his sentence, petitioner has been directed to deposit 20% of the compensation amount within 60 days from the date of passing of the order dated 09.12.2022, as ordered by the trial Court.

Brief facts of the case are that respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act (for short “the NI Act”) against the petitioner on the ground that he is running business of Commission Agent in the name and style of M/s Manoj Kumar Lalit Kumar in Mandi No.1, Abohar and he is the sole proprietor

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of said firm. It is further submitted that respondent-complainant maintains true, proper and correct account books of his firm and strikes the balance daily. It is further submitted that petitioner opened his account with the concern of the complainant in his account books and promised to sell his all agriculture produce through the commission agency of respondent. Petitioner also promised to pay the interest @ 18% per annum on the all borrowed amounts. It is further submitted that petitioner borrowed a total sum of Rs. 374580/- on different dates as fully described in detail in the para No.4 of the complaint. Thereafter, respondent demanded his above said amount from the petitioner several times but he lingered on the matter either on the one pretext or the other. Petitioner issued two chques i.e. first cheque of Rs.250000/- of dated 10.3.2017 bearing No.433783 having account No.13613 of Canara Bank, Abohar in discharge of his part payment. Petitioner also issued another cheque bearing No.433784 for Rs.124850/- dated 10.05.2017 of Canara Bank, Abohar with assurance that the same will be honoured on its presentation in the bank. Thereafter, respondent-complainant presented the cheque No.433783 dated 10.3.2017 for collection purpose in his bank i.e. HDFC Bank, Abohar on 11.3.2017 and the bank of respondent sent the same to the bank of petitioner for collection on 14.3.2017 but the bank of accused returned the same with cheque returning memo dated 14.3.2017 with remarks "Funds Insufficient". Then, respondent issued a legal notice dated 16.3.2017 to the petitioner but he failed to make the payment of said cheque. The respondent has also presented the second cheque i.e. present cheque in question bearing No.433784 dated 10.5.2017 amounting to Rs.124850/- of

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Canara Bank, Abohar in his bank i.e. HDFC Bank, Abohar but the said cheque was also dishonoured by the bank of petitioner vide memo dated 12.5.2017 bearing remarks "Funds Insufficient". The respondent collected the same from his bank and approached the petitioner and demanded the amount of cheque but accused lingered on the matter. It is further submitted that thereafter respondent sent a legal notice dated 16.5.2017 posted on 18.5.2017 to the petitioner but even after service of the same, petitioner did not make the payment after passing the stipulated period.

The trial Court after hearing learned counsel for the parties and on appreciation of evidence, held petitioner guilty and sentenced him to undergo rigorous imprisonment for a period of one year and six months under Section 138 of the NI Act and to pay compensation of Rs.1,24,850/- under Section 357(3) of the Cr.P.C. to the respondent-complainant and on failure of payment of compensation to the respondent-complainant, petitioner was directed to further undergo simple imprisonment for a period of two months vide judgment of conviction and order of sentence dated 10.11.2022.

Aggrieved against the judgment and order of sentence of the trial Court, petitioner preferred appeal before the appellate Court, wherein vide order dated 09.12.2022, while suspending his sentence, petitioner has been directed to deposit 20% of the compensation amount within 60 days from the date of order before the trial Court.

Learned counsel for the petitioner contends that the impugned order dated 09.12.2022 is patently wrong as no condition can be imposed while suspending the sentence. He further submits that provisions of

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Sections 143-A and 148 of the NI Act nowhere provide that if the payment, as ordered, has not been deposited, the bail granted shall be liable to be cancelled.

I have heard learned counsel for the petitioner and perused the record.

This very issue had arisen before the Hon'ble Supreme Court in ***Surinder Singh Deswal @ Col. S.S. Deswal v. Virender Gandhi, 2020(1) R.C.R. (Criminal) 604*** wherein the Hon'ble Supreme Court has held that where a conditional order of suspension of sentence has been passed by the Appellate Court, on non-fulfilment of the condition, the suspension order can be vacated. Reference may be made to Paras 17 to 19 of the judgment, which are reproduced as under:-

“17. The judgment of Punjab and Haryana High Court in Vivek Sahni and another(supra) which has been relied by the learned counsel for the appellants has been noted and elaborately considered by the High Court in the impugned judgment. In paragraph 14 and 15 of the impugned judgment of the High Court reasons have been given for distinguishing the Vivek Sahni’ case.

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

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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.

19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.”

In view of the above position, as settled by the Hon'ble Supreme Court in ***Surinder Singh Deswal's*** case (supra), there is no illegality or perversity in the order dated 09.12.2022 passed by the Court of learned Additional Sessions Judge, Fazilka. Accordingly, the petition is dismissed with no order as to costs.

09.01.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No