

CRM-M-6064 of 2021 (O&M)

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

CRM-M-6064 of 2021 (O&M)
Date of decision: 16.02.2023

Bharat Singh

.....Petitioner

Versus

Lekh Raj Kamboj and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Kamal Narula, Advocate,
for the petitioner.

Mr. Yogesh Aneja, Advocate,
for the respondents.

NAMIT KUMAR, J. (ORAL)

Petitioner has approached this Court by filing the present petition under Section 482 Cr.P.C. impugning the order dated 01.12.2020 (Annexure P-4) passed by the Court of learned Additional Sessions Judge, Fazilka, in CRA No.207 dated 01.12.2020 titled 'Bharat Singh v. Lekh Raj Kamboj and another' whereby while suspending his sentence, petitioner has been directed to deposit 20% of the compensation amount, as ordered by the trial Court, within 60 days from the date of passing of the impugned order.

Brief facts of the case are that respondents filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') against the petitioner alleging therein that the petitioner issued a cheque bearing No.000015 dated

CRM-M-6064 of 2021 (O&M)

08.06.2018 for Rs.4,50,735/- and another post dated cheque bearing No.00016 dated 30.08.2018 for Rs.1,50,000/- against his existing liability. However, when the cheque was presented for encashment, same was dishonoured with the remarks 'Funds Insufficient'. Thereafter, complainant respondent issued a legal notice dated 08.09.2018 to the petitioner but he failed to make the payment of said cheque. After preliminary evidence, petitioner was summoned to face trial under Section 138 of the NI Act. 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 two years under Section 138 of the NI Act and to pay compensation of Rs.6,50,000/-/- under Section 357(3) of the Cr.P.C. to the respondents-complainant

Aggrieved against the judgment of conviction and order of sentence of the trial Court, petitioner preferred appeal before the appellate Court, wherein vide order dated 01.12.2020, 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 01.12.2020 is patently wrong as no condition can be imposed while suspending the sentence. He further submits that provisions of 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.

CRM-M-6064 of 2021 (O&M)

Per contra, learned counsel for the respondents hailed the impugned order passed by the appellate Court as the same has been passed under the provisions of the NI Act.

I have heard learned counsel for the parties 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 non compliance 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

CRM-M-6064 of 2021 (O&M)

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 01.12.2020 passed by the Court of learned Additional Sessions Judge, Fazilka. Accordingly, the petition is dismissed with no order as to costs.

Pending application(s), if any, stand disposed of in view of the abovesaid judgment.

16.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No