

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

CRM-M-24016-2023

Date of Decision: May 11, 2023

MILAN POULTRY FIRM THROUGH ITS PROPRIETOR MILAN SINGH Petitioner

Versus

M/S ULTIMATE FEEDS M.M. HOUSE BUILDING Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Arun Sharma, Advocate for the petitioner.

HARKESH MANUJA, J. (ORAL)

1. By way of present petition filed under Section 482 CrPC, prayer has been made for setting aside of the orders dated 20.02.2023 and 18.04.2023 passed by the First Appellate Court in exercise of powers under Section 148 of the Negotiable Instruments Act, 1881(hereinafter referred to as the Act) whereby the benefit of suspension of sentence granted in favour of petitioner has been revoked on account of non-deposit of 20% of amount of compensation within the stipulated period followed by issuance of non-bailable warrants against him.

2. Briefly stating, the facts of the case are that the petitioner was convicted under Section 138 of Negotiable Instruments Act vide judgment dated 18.10.2022 passed by the trial Court, directing him to deposit compensation to the tune of Rs.14,00,000/- besides passing order of sentence against him. Aggrieved thereof, the petitioner filed First Appeal. Vide order dated 14.11.2022, the First Appellate Court

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directed the petitioner to deposit 20% of compensation amount while issuing notice in the appeal for 16.01.2023 and granted the relief of suspension of sentence subject to aforesaid deposit.

3. On 16.01.2023 the petitioner was again granted time for deposit of the amount of compensation till 20.02.2023. On the said date, the petitioner could not present himself before the First Appellate Court on account of he being down with viral fever and an application for seeking exemption from personal appearance was filed. The prayer for exemption was declined by the First Appellate Court and the benefit of suspension of sentence was revoked on account of non-deposit of 20% of compensation amount followed by issuance of non-bailable warrants against the petitioner for 18.04.2023. By way of present petition the orders dated 20.02.2023 and 18.04.2023 passed by the First Appellate Court have been impugned.

4. Learned counsel for the petitioner fairly submits that in view of the judgment of Supreme Court in “**Surinder Singh Deswal @ Col. S.S. Deswal Vs. Virender Gandhi 2019(3) RCR(Cri) 186**”, he would be in a position to persuade this Court regarding direction for deposit of 20% of compensation amount as directed by the First Appellate Court. He further submits that the non-appearance of the petitioner on 20.02.2023 was for the reasons beyond his control as he was down with viral fever and an application for exemption was moved before the trial Court, though the same did not find favour with the Court. Learned counsel further submits that there was no mala fide on the part of the petitioner as he always wanted to comply with the orders passed by the

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trial Court but for issuance of non-bailable warrants against him on 20.02.2023, he could not appear and deposit the 20% of compensation amount as directed by the First Appellate Court. Learned counsel prays that in case, the petitioner is afforded a week's time, he shall appear before the trial Court and furnish his fresh bail bonds along with deposit of 20% compensation amount besides suitable cost towards the respondent-complainant as well.

5. I have heard learned counsel for the petitioner and gone through the paper-book. I find substance in the submissions made on behalf of the petitioner.

6. Undisputedly, the First Appellate Court was within its jurisdiction while passing the order dated 20.02.2023, revoking the order of suspension of sentence granted in favour of the petitioner on account of his non-deposit of 20% of compensation amount. No illegality can be found with the same, in view of the law settled by the Hon'ble Supreme Court in case of **"Surinder Singh Deswal @ Col. S.S. Deswal Vs. Virender Gandhi (II) 2020 AIR (Supreme Court) 415"**. Paragraph 18 thereof which is relevant for the purpose of present case is reproduced hereunder:-

"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-

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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.”

7. Although, as per Sub-Section 2 to Section 148 of Negotiable Instruments Act, the amount of compensation as directed by the First Appellate Court under Sub-Section 1 thereof has to be deposited within 60 days from the date of order or within further period not exceeding 30 days, however, in view of the relevant observations made by the Hon’ble Supreme Court in case of “**Surinder Singh Deswal @ Col. S.S. Deswal Vs. Virender Gandhi (I), 2019 AIR (Supreme Court) 2956**” wherein the Hon’ble Supreme Court granted extension of time to the appellants to deposit the amount as directed by the First Appellate Court, though in exercise of powers under Article 142 of Constitution of India can thus be followed as a guidance for considering the prayer made on behalf of the petitioner as regards grant of extension for deposit of 20% compensation amount as directed by the First Appellate Court vide order dated 14.01.2022. Relevant paragraph No.11 from the case of “**Surinder Singh Deswal @ Col. S.S. Deswal (I) (Supra)**” is reproduced hereunder:-

“At this stage, learned Senior Advocate appearing on behalf of the appellants has requested to grant the appellants some more time (three months’ time) to deposit the amount as per the order passed by the first appellate court, confirmed by the High Court. The said prayer is opposed by the learned Advocate appearing on behalf of the original complainant. It is submitted that as per amended [Section 148](#) of the N.I. Act, the appellants –

accused have to deposit the amount of compensation/fine as directed by the appellate court within a period of 60 days which can be further extended by a further period of 30 days as may be directed by the Court on sufficient cause being shown by the appellants. However, in the facts and circumstances of the case and considering the fact that the appellants were bonafidely litigating before this Court challenging the order passed by the first appellate court, in exercise of powers under [Article 142](#) of the Constitution of India and in the peculiar facts and circumstances of the case and the amount to be deposited is a huge amount, we grant further four weeks' time from today to the appellants to deposit the amount as directed by the first appellate court, confirmed by the High Court and further confirmed by this Court."

8. In view of the aforesaid proposition of law and applying the same to the facts and circumstances of the present case wherein the petitioner could not appear before the First Appellate Court on 20.02.2023 on account of he being down with viral fever even having filed an application for seeking exemption from personal appearance, though rejected followed by issuance of non-bailable warrants against him, besides taking into consideration his substantial rights, I deem it appropriate to exercise powers vested under Section 482 CrPC and grant one last opportunity to the petitioner so as to surrender before the First Appellate Court and furnish his fresh bail bonds to its satisfaction besides depositing of 20% of compensation amount within a period of 10 days from today. In case, the petitioner makes the aforesaid compliance, the same shall result in restoration of the benefit of suspension of sentence in his favour.

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9. Thus, in view of the discussions made herein-above the present petition is allowed. The impugned orders dated 20.02.2023 and 18.04.2023 passed by First Appellate Court are hereby set aside. The petitioner shall however be liable to compensate the respondent-complainant with a sum of Rs.20,000/- to be deposited with First Appellate Court which shall be released in favour of respondent-complainant immediately.

10. It is however, made clear that the present petition has been disposed without issuance of notice to respondent-complainant as the same would have further delayed the disposal of the First Appeal.

11.05.2023

Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>