

2023:PHHC:081478

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

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**CRM-M-28578-2023
Date of decision: 01.06.2023**

SANJEEV KUMAR

...PETITIONER(S)

VERSUS

KRISHAN KUMAR

...RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Chander Shekhar, Advocate
for the petitioner.

GURBIR SINGH, J. (ORAL)

Learned counsel for the petitioner submits that the petitioner was convicted and sentenced by learned Judicial Magistrate Ist Class, Kurukshetra vide judgment dated 31.01.2023 and 01.02.2023 respectively under Section 138 of Negotiable Instruments Act.

The complaint under Section 138 of Negotiable Instruments Act was filed in the Court of Id. Judicial Magistrate Ist Class, Kurukshetra. The learned trial Court held the petitioner guilty vide judgment dated 31.01.2023 and vide order dated 01.02.2023 directing him to undergo simple imprisonment for a period of one year and further directed to compensate the complainant with double of the cheque amount.

Aggrieved against the said judgment, the petitioner filed an appeal along with application for suspension of sentence and compensation till the pendency of appeal filed there. The learned Appellate Court vide order dated 22.02.2023, suspended the sentence imposed upon the appellant on furnishing personal bond of Rs.50,000/- with one surety in the like amount to the satisfaction of learned trial Court/Duty Magistrate, Kurukshetra. The appellant was further directed to deposit 20% of the amount of compensation

awarded by the learned trial Court.

The learned counsel for the petitioner submits that petitioner is not in having finances to deposit the said amount. If the amount of 20% of compensation is not deposited then his bail may be cancelled. Learned counsel for the petitioner further submits that the petitioner is ready to deposit the 10% amount of compensation within one month and remaining amount may be allowed to be deposited by way of installments during the pendency of the appeal.

Learned counsel for the petitioner has referred the case in **CRM No.20603-2022** titled as ***“Amit Kumar (Deceased) through his LR’s mother Smt. Sushila Devi and State of Haryana and another”*** decided on 06.07.2022 passed by the Co-ordinate Bench of this Court. In the said case, on conviction under Section 138 of Negotiable Instruments Act, the convict filed an appeal in learned Appellate Court alongwith application for suspension of sentence and order that sentence awarded to the appellant shall be suspended on furnishing personal bonds and surety bonds and further condition was imposed. The complainant moved an application under Section 148 of NI Act. The learned Appellate Court directed the convict to deposit 20% of the amount of compensation within 90 days.

Learned counsel for the aggrieved petitioner/complainant of that case has argued that in case of non deposit of amount of compensation, the order suspending the execution of substantive sentence of imprisonment, is ipso facto vacated or becomes non-est.

Para No.17 of the judgment is reproduced below:

“17. In short, even if the respondent-accused, has not meted compliance qua the order made on 30.05.2022, upon, the complainant's application cast

under Section 148 of the Act, yet on her omission to do so, the respondent-accused, cannot be faced with the ill-consequence qua the order, suspending the execution of the substantive sentence of imprisonment, as passed, on her application under Section 389 of the Cr.P.C., becoming, construable to become ipso facto annulled, or, set aside, nor can, for lack of compliance qua an order made on 30.05.2022 against the respondent-accused, the learned Appellate Court concerned, can proceed to direct the subjecting(s) or putting(s) to judicial incarceration, hence the errant respondent-accused. As above stated, the remedy for execution or realization of the amounts, determined under a conclusive order made under Section 148 of “the Act”, is through adoption of the procedure contemplated under Section(s) 421 / 431 of the Cr.P.C.”

The learned Court summarizes the law in Para No.21 of the judgment:-

“21. This Court hence summarizes the hereinafter principles of law which rather culminate/arise from the discussion:

(i) Section 389 of the Cr.P.C., and, Section 148 of the Act, are, independent of each other;

(ii) Section 389 of the Cr.P.C., is meant for protecting the personal liberty of the convicted person, whereas, Section 148 of “the Act” is auxiliary thereto or is supplemental, to the mandate carried in Section 389 of the Cr.P.C.;

(iii) For non-compliance of a conclusive order made under Section 148 of the Act, it would not bring any ill consequence qua, hence the personal liberty of the convict becoming threatened or jeopardized, and, nor would the errant convict, become amenable, for his being put to judicial custody;

(iv) the learned Appellate Court for ensuring that the order, suspending the execution of the sentence of imprisonment, takes fullest effect, becomes enjoined to, apart from directing the convict to furnish personal and surety bonds, to also direct the convict-applicant to deposit a reasonable percentum of the cheque amount.

(v) The remedy under Section 389 of the Cr.P.C., is workable towards the convict, whereas, the

remedy under Section 148 of “the Act”, is, amenable for recourse to the complainant.

(v) The remedy under Section 148 of the Act, can be availed by the complainant, post an order made under Section 389 of the Cr.P.C., and, if so, the learned Appellate Court, while deciding an application under Section 389 of the Cr.P.C., is required to, in asking the convict to deposit a reasonable percentum of the cheque amount, before its establishment, imperatively bear in mind, the factum that the above insistence, may not be beyond 20%. In case, the learned Appellate Court, upon the convict's application cast under Section 389 of the Cr.P.C., rather suspends the execution of the sentence of imprisonment imposed, upon him, by the Convicting Court, and, hence imposes upon him a condition, that he/she deposits 20% of the compensation / cheque amount, then in the subsequent application, preferred under Section 148 of the Act, the learned Appellate Court, may in its discretion, bearing in mind all the relevant facts, inclusive of immense pain being caused to the estate of the convict, upon, thereafter too, the convict being directed to deposit another 20% of the compensation amount, hence to be realized from the accused's estate, rather exercise the statutory discretion with the utmost legal sagacity.

(vi) If both the applications are simultaneously filed, then both required to be decided in a just and fair manner, and, obviously the principle of inter-se proportionality in making the relevant orders thereons, is to be applied most judiciously.

(vii) The disbursement of monies, as deposited, by the convict, in compliance to an order made under Section 389 Cr.P.C., shall become regulated by the outcome of the apposite trial, but in the event of composition of the offence, occurring amongst the concerned, the appellate Court may cause lawful releases thereof, to the complainant.”

Thus, the omission on the part of the convict to deposit the compensation amount awarded against him under Section 148 of NI Act, the convict cannot be faced with ill-consequence qua the order suspending the

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execution of substantive sentence of imprisonment and reasonable percentum of the compensation can be awarded.

Thus, petitioner is directed to deposit the 10% amount of compensation awarded vide order dated 27.02.2023 within a period of one month and if any application is moved by the petitioner forthwith with a prayer to deposit the amount of remaining 10% by way of installments then Court concerned shall decide the same keeping in view the financial condition of the petitioner.

In case respondent-complainant is not satisfied with the order, then he can move an application within two months for rehearing of the case.

The petition stands disposed of.

(GURBIR SINGH)
JUDGE

01.06.2023
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No