

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-31250-2023 in/and
CRR No.1708 of 2023 (O&M)
DATE OF DECISION: 31st JULY, 2023

Israr

.... Petitioner

Versus

State of Punjab and another

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mohd. Salim, Advocate
for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

CRM-31250-2023

This is an application for condonation of delay of 139 days
in filing the revision petition.

For the reasons mentioned in the application, the same is
allowed and delay of 139 days in filing the revision petition is condoned.

Main Case

1. The present petition has been filed by the petitioner against
the judgment dated 09.12.2022 passed by the Additional Sessions Judge,
Sangrur, whereby the petitioner was directed to deposit 20% of the total
amount of compensation awarded by the trial Court within 60 days and a
conditional order of suspension of sentence was passed.

2. Learned counsel for the petitioner has submitted that the
power of the Court under Section 148 of the Negotiable Instruments Act,

1881 (for short, the NI Act) is discretionary in nature. Instead of directing the petitioner to deposit 20% of the compensation amount, the lower Appellate Court should have decided the appeal itself. In any case, it was not bounden duty cast upon the Court below to pass an order for deposit of the said amount. The discretionary power should have been exercised in favour of the petitioner. It is further submitted by the counsel for the petitioner that the power of the Court under Section 148 of the NI Act is directory in nature and not mandatory. Learned counsel has relied upon the judgment rendered by Bombay High Court in the case of *M/s Ashwin Ashokrao Karokar and others Versus Mr. Laxmikant Govind Joshi and others, 2022 (3) PLR 47*.

3. Having heard learned counsel for the petitioner and having perused the case file, this Court does not find any ground to interfere in the matter. The lower Appellate Court had passed the order dated 09.12.2022 directing the petitioner to deposit 20% of amount of compensation as a condition for suspension of his sentence. The same was not deposited by the petitioner. Though the petitioner had rendered himself liable to be taken into custody on account of non-obeying of the conditional order of bail, however, the petitioner again gave an undertaking before the Court below on 17.07.2023 that he will deposit 20% of the compensation amount on the next date of hearing, which has been fixed by the trial Court for 28.08.2023. Accordingly, the time was extended by the Court below. Instead of depositing the said 20% of the compensation amount according to his undertaking, the petitioner has challenged the order passed by the Court below. The order dated 17.07.2023 could not have been challenged by the petitioner because it is

passed on his own undertaking. So far as the original order dated 09.12.2022 is concerned, the said order has been passed only as per the statutory provisions. The petitioner has not pointed out any deviation by the Court below from any judicial principles required to be followed for exercise of the judicial discretion. Therefore, the judgment relied upon by the counsel for the petitioner rendered by Bombay High Court in the case of *M/s Ashwin Ashokrao Karokar and others* (supra) is of no help to his case. The fact that the appeal of the petitioner itself could have been decided instead of imposing condition regarding deposit of 20% of the amount of compensation is of no help to the petitioner. If this argument is accepted, then the lower Appellate Court cannot even exercise any power under Section 148 of the NI Act for directing to deposit the amount as prescribed under this Section; because every appellant-convict can raise the said argument.

4. In view of the above, finding no merit in the present petition, the same is dismissed.

31st JULY, 2023
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No