

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

CRM-M-52332-2022

Date of Decision: 22.02.2023

HARINDER PAL ALIAS HARVINDER PAL BANSAL

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Arshvir Singh Sandhu, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, A.A.G., Punjab.

Respondent no.2-Rajbir Singh, in person.

HARSH BUNGER, J.

Prayer in the present petition, filed under Section 482 of the Code of Criminal Procedure, is for quashing of order dated 21.07.2022 (Annexure P-4) passed by the Sessions Judge, S.A.S. Nagar, whereby, the bail of the petitioner was cancelled and his surety bonds were forfeited to the State and non-bailable warrants of the petitioner were issued in Criminal Appeal No.**CRA-87-2019** titled as ***"Bansal Department Store vsRajbir Singh"*** (Annexure P-2) arising out of complaint No.NACT/62/2016 dated 04.02.2016.

Succinctly, the petitioner has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the N.I. Act, 1881'), in Criminal Complaint No.NACT/62/2016 titled as ***"Rajbir Singh vsBansal Department Store"*** vide judgment dated

28.02.2019 passed by learned Judicial Magistrate Ist Class, Kharar.Bya
separate order of even date, the petitioner was sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>
<i>138 of the Negotiable Instruments Act.</i>	<i>Rigorous imprisonment for one year and six months, besides payment of fine of Rs.5,000/- and in default thereof, further undergo imprisonment for a period of one month.</i>

Aggrieved against the aforesaid judgment of conviction and order of sentence dated 28.02.2019 passed by the Judicial Magistrate Ist Class, Kharar, the petitioner has preferred an appeal before the learned Sessions Court, S.A.S. Nagar (Mohali), vide Criminal Appeal No.CRA-87-2019 titled as ***“Bansal Department Store vsRajbir Singh”***.

It appears that the sentence of the petitioner was suspended vide order dated 27.03.2019 (Annexure P-3) passed by learned Sessions Judge, S.A.S. Nagar. It is submitted that the petitioner was regularly appearing before the learned Appellate Court since the date of filing of the appeal, however, on one date i.e. 21.07.2022, petitioner could not appear before the lower Appellate Court because of noting down a wrong date, accordingly his bail order was cancelled and surety bonds were forfeited to the State and the non-bailable warrants of the petitioner were issued. The petitioner filed this petition before this Court, seeking quashing of said order dated 21.07.2022 (Annexure P-4) passed by the Sessions Judge, S.A.S. Nagar.

Notice of motion in the case was issued on 14.11.2022.

A perusal of order dated 08.12.2022 transpires that the learned counsel for the petitioner has submitted that the petitioner is ready and willing to settle the dispute amicably with respondent No.2. Respondent

no.2-Rajbir Singh, who was present-in-person in the Court on the said date, also shown his willingness to settle the dispute with the petitioner, whereupon, the petitioner was directed to come present in the Court on the date fixed to explore the possibility of amicable settlement and in the meanwhile, the trial Court was directed to adjourn the proceedings beyond the date fixed before this Court.

During the present proceedings, the parties entered into compromise and the following order was passed by this Court on 09.12.2022 :-

“Pursuant to order dated 08.12.2022, petitioner-namely Harinder Pal @ Harvinder Pal Bansal, has appeared in Court today, who is duly identified by his counsel.

Today, the petitioner and respondent No.2 have stated in Court that they have amicably settled their dispute for a total amount of Rs.7,00,000/-, out of which, a post datedcheque, dated 14.12.2022, for an amount of Rs.50,000/- has been handed over to respondent No.2 by the petitioner in Court itself, which is duly accepted by respondent No.2, a photocopy of the said cheque is also taken on record, subject to all just exceptions. The petitioner and respondent No.2 have further stated that now the balance amount of Rs.6,50,000/- shall be paid by the petitioner in two installments. The first installment of Rs.3,50,000/- shall be payable on or before 10.02.2023, in which regard, the petitioner would bring the post datedcheque of the said amount in favour of respondent No.2 on the next date of hearing in Court and the second installment of Rs.3,00,000/- shall be paid by the petitioner on or before 20.03.2023.

Respondent No.2 submits that upon payment of the total settled amount in the aforesaid manner by the petitioner, all the disputes between them shall stand

resolved and he shall not initiate any proceedings emanating out of or relating to Cheque No.118286 dated 04.12.2015 and Cheque No.202726 dated 04.12.2015, drawn on the Punjab National Bank, Randhawa Road, Kharar.

List on 19.12.2022.

Parties shall remain present in Court on the next date of hearing.

*Proceedings pending before the Appellate Court in CRA-87-2019, titled as “**Bansal Departmental Store Vs. Rajbir Singh**”, shall remain stayed till the next date of hearing only.”*

In terms of said order dated 09.12.2022, the following order was passed on 19.12.2022 :-

“ In terms of order dated 09.12.2022, Mr. Rajbir Singh (respondent No.2) is present in Court and has submitted that the cheque amounting to Rs.50,000/- has been encashed, and today, the petitioner, who is present in Court, duly identified by his counsel, has handed over another Post Date Cheque bearing No.085574 dated 10.02.2023 amounting to Rs.3,50,000/- in the name of Rajbir Singh (respondent No.2), as second installment of the settled amount in pursuance of order dated 09.12.2022; copy thereof is supplied in Court today, which is taken on record, subject to all just exceptions.

List on 16.02.2023.

Interim order to continue till the next date of hearing only.

Parties shall remain present in Court on the next date of hearing.”

On 16.02.2023, respondent No.2-complainant informed the Court that the second cheque amounting to Rs.3,50,000/-, which was given in pursuance to settlement arrived at between the parties, has been dishonoured due to “insufficient funds”. Said observation of respondent

No.2-complainant has been recorded in the following order passed by this Court on 16.02.2023 :-

“Respondent No.2-Rajbir Singh, who is present in the Court today submits that the Cheque bearing No.085574 dated 10.02.2023 amounting to Rs.3,50,000/- which was paid towards the settlement amount as recorded in the order dated 09.12.2022 has been dishonoured due to insufficient funds.

Photocopy of the memo has been supplied by respondent No.2-Rajbir Singh in the Court today, the same is taken on record, subject to all just exceptions.

Learned counsel for the petitioner submits that he has not been able to contact the petitioner and prays for an accommodation to seek instructions in the matter.

At his request, adjourned to 22.02.2023.”

Today also, when the case was taken up for hearing, learned counsel for the petitioner pleads lack of instructions.

While encouraging settlements, it is required that the interest of the parties are protected and no one misuses or abuses the process of the Court to harass the other party or take un-due advantage over the other. The integrity and efficacy of the proceedings before this Court are therefore to be maintained. Respondent No.2/RajbirSingh, was under the *bona fide* belief that once the matter has been settled in the Court and the compromise has been arrived at, the terms of compromise would be adhered to. It *prima facie* appears that the petitioner knowingly that he would not adhere to the terms of compromise, with an ulterior motive to delay the proceedings and to avoid criminal prosecution, has handed over a Post Dated Cheque bearing No.085574 dated 10.02.2023, amounting to Rs.3,50,000/- in the name of Rajbir Singh (respondent No.2).

Be that as it may, since the petitioner has failed to adhere the terms of compromise arrived at between the parties and counsel for the petitioner pleads no instructions, accordingly, the instant petition is dismissed.

All pending application/s, if any, shall stand closed.

February 22, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No