

2024:PHHC:153312



134

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2311-2024
DECIDED ON: 19.11.2024

DAVINDER SINGH

.....PETITIONER

VERSUS

ATUL KUMAR AND ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Riffi Birla, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

The present revision petition has been preferred assailing the order dated 30.10.2024 vide which application for deposit of 20% amount out of the said compensation has been declined.

The factual matrix leading to the filing of instant petition would depict that the petitioner allegedly borrowed an amount of Rs.2,94,000/- from the respondent/complainant in the July 2018 and in discharge of that liability issued post dated cheque No.000001 dated 28.09.2018 for an amount of Rs.2,94,000/-.

It is averred on behalf of the complainant that the said cheque was declined on presentation vide memo dated 29.09.2018 with the remarks “Account Closed”.

Despite issuance of statutory legal notice by the respondent/complainant, the petitioner is alleged to have not made the necessary

payment and complaint in question was preferred on 22.11.2017 under Section 138 of Negotiable Instruments Act, 1881 (for short referred as 'Act').

Finally in the said complaint, the petitioner was convicted vide judgment dated 19.07.2022 (Annexure P-11) for a period of one year RI alongwith a direction to pay compensation to the tune of cheque amount i.e., 1,40,000/- alongwith interest @ 9% per annum from the date of issuance of cheque in question.

It is against the said judgment of conviction, the petitioner preferred an appeal before the Additional Sessions Judge, Fazilka alongwith an application seeking suspension of sentence.

The said application was dismissed by the Court below and warrant of arrest were issued against the petitioner on his failure to deposit the 20% compensation amount within the stipulated period of 60 days from the date of passing of order dated 17.08.2022 as per the mandate of statutory vide Section 148 of Act.

This order was challenged before the High Court on an earlier occasion vide CRM-M-53293-2024, which was disposed of on 24.10.2024 after the statement made by the petitioner to the effect that he is ready and willing to deposit the said amount and accordingly, the petitioner was remanded back for the said purpose with a direction that if any application for suspension of sentence is filed by the petitioner, the same be considered in accordance with law on that very day.

After passing of the said order dated 24.10.2024 by this Court, the necessary application was filed seeking permission to deposit 20% of the compensation amount, but the Additional Sessions Judge vide order dated 30.10.2024 has declined the said application on the ground that 90 days period prescribed under Section 148(2) of the Act for such deposit having lapsed, after it

was calculated from the date of order i.e., 17.08.2022. The application for suspension of sentence also stands declined observing that it is not feasible for the Additional Sessions Judge to permit the appellant to deposit 20% of the compensation amount after expiry of limitation period of 90 days without any specific direction to condone the period by the High Court.

It is in this eventuality, the present petition has been preferred for short question that “whether the period of 90 days as envisaged under Section 148(2) of the Act can be extended by condoning the delay?”

This Court cannot loose sight of the fact that Section 143A read with Section 148 of the Act do crystallize the intent of legislation i.e., the sole purpose of extending minimum relief by way of such statutory restriction after conviction at the appellate stage, if suspension of sentence is sought by an accused. The proceedings conducted under the Act are summary in nature and intricacies and technicalities of law should not come in between the object where the advancement of justice demands for consideration of condonation of delay by extending time of limitation beyond the period prescribed under the Act.

The inherent powers vested with this Court under Section 482 Cr.P.C., (528 BNSS 2023) would include the power to extend such period of limitation if sufficient and reasonable cause is shown with bonafide on the part of the accused.

In the present petition, the petitioner’s counsel has taken the stance that initially, the petitioner appeared in person due to unavoidable circumstances before the Lower Appellate Court, which prevented the counsel from providing necessary legal support, and petitioner actually could not put forth his own case and failed understand the complications of not depositing the 20% of the compensation amount, which resulted into the issuance of warrants of arrest. However, he immediately approached this court vide CRM-M-53293-2024, wherein an

undertaking was given to deposit the said amount before the Lower Appellate Court, as is evident from the order dated 24.10.2024 and in that endeavour petitioner moved the necessary application alongwith a prayer for suspension of sentence.

However, the Additional Sessions Judge, Fazilka declined the said application citing the period of 90 days having expired as is the mandate of Section 148(2) of the Act and against that order even today in the present revision petition, the stand of the petitioner is still the same that he is ready and willing to deposit the necessary amount without any delay.

Considering the reasons mentioned in the petition and discussions made hereinabove, I am of the considered view that sufficient cause is available on the part of the petitioner, who being a laymen, was not having appropriate legal assistance on 17.08.2024, on account of which having failed to understand the legal intricacies in appropriate manner did not deposit the amount of 20%, which resulted into multiplicity of litigation.

It can never be the intent of judicial process in such like offence, where the summary proceedings are to be conducted. The approach of the Courts should be liberal and based on equity with the purpose of providing level playing field to each and every litigant including to an accused.

It is also evident from the sequence of litigation, in which the petitioner was involved after passing of the orders dated 17.08.2022 and 30.10.2024, he sought suspension of sentence and thereafter warrant of arrest were issued, which were challenged before this Court and again an application was moved seeking permission before the Additional Sessions Judge to deposit the 20% amount of the compensation.

After having given a considerable thought, I am of the considered view that the bona fide of the petitioner is quite evident from the fact that he is ready and willing to deposit the 20% amount of compensation as per the order dated 17.08.2022. Hence, the delay occurred for depositing of aforesaid amount beyond the prescribed limitation of 90 days is hereby condoned and the same extended further.

However, it shall be imperative upon the petitioner to move necessary application afresh before the Additional District & Sessions Judge, Fazilka for permission to deposit the 20% as directed vide order dated 17.08.2022, who shall consider the said application and decide the same in light of observations made hereinabove.

The application stands disposed off, accordingly.

(SANDEEP MOUDGIL)
JUDGE

19.11.2024

Meenu

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