

present petition stands disposed of with a direction to the Executing Court to make earnest endeavours to decide the executing proceedings within a period of three months from today, in accordance with law.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Sureshwar Thakur, J.

Criminal Revision No. 1752 of 2021 (O&M)

Decided on:11.01.2022

Rajesh Kumar

Petitioner

Versus

Jaipal and another

Respondents

Present:

Mr. Jitender S. Chahal, Advocate for the petitioner.

Mr. Pradeep Prakash Chahar, Deputy Advocate General, Haryana
(Through Video Conferencing)

A. Negotiable Instruments Act, 1881 (26 of 1881), Section 138, 148 -- Code of Criminal Procedure, 1973 (2 of 1974), Section 374, 389 -- Cheque bounce case -- Conviction u/s 138 NI Act – Suspension of sentence on furnishing of personal and surety bonds in the sum of Rs. 1 Lakh – Later on an application by complainant, Appellate Court proceeded to direct the appellant, to pay an amount of Rs. 2,30,000/- comprising 20% of the compensation amount to the complainant within one month – Order made by Appellate Court is a discreet, and, tacit attempt, to proceed to impermissibly review, and scuttle the effect of the binding order -- It is ridden with a vice of infirmity, if so, and, even if assuming the order did hold some aura or tinge of validity, yet until and unless there was some evidently deterrent circumstances, prevailing upon the learned Appellate Court, as comprised in the appellant rather deliberately delaying the making of an expeditious decision, upon the appeal, there was no occasion for the learned Appellate Court to make the order -- De hors finality being assignable to P-3/order suspending sentence, High Court directed the convict / petitioner to deposit 15% of the cheque amount before the learned Appellate Court within one month.

(Para 2-9)

B. Negotiable Instruments Act, 1881 (26 of 1881), Section 138, 148 -- Code of Criminal Procedure, 1973 (2 of 1974), Section 374 -- Cheque bounce case -- Interim deposit of compensation u/s 148 of NI Act – Restoration of compensation to accused/appellant – Order of – Requirement of -- Legally incumbent upon the learned First Appellate Court, to order that in case there is allowing of the appeal, as preferred before it, by the accused-convict, thereupon the interim compensation, as determined, be restored or refunded to the accused/ convict, by the complainant -- However, the directions, as legally required to be made, while being seized with an application, u/s 148 of the NI Act, are not

existing, hence the order suffers from an infirmity.

(Para 7)

SURESHWAR THAKUR, J. (ORAL) –

1. The learned Judicial Magistrate First Class, Panipat, made a verdict of conviction, on 13.02.2019, upon the accused, one, Rajesh Kumar, upon CIS No. NACT-636 of 2017. Through a separate sentencing order, drawn on 14.02.2019, by the learned Magistrate, he proceeded to sentence the accused to undergo simple imprisonment, hence for a period of one year. Moreover, he also proceeded to sentence the accused to pay a fine of Rs. 11.50 Lac.

2. The afore verdict of conviction and consequent therewith sentence (supra), as became imposed upon the accused, became appealed before the learned Appellate Court concerned. The apposite appeal is yet subjudice before the learned Appellate Court. However, the learned Appellate Court on an application moved before it, under Section 389 Cr.P.C., proceeded to suspend the execution of sentence of imprisonment (supra), as became imposed upon the convict, by the learned JMIC concerned, subject to the convict furnishing his personal and surety bonds in the sum of Rs. 1 Lakh. The afore made order was pronounced, on 07.03.2019 (Annexure P-3).

3. However, on 14.09.2021, upon an application moved before the learned Appellate Court by the complainant, under, the provisions of Section 148 of the Negotiable Instruments Act, the learned Appellate Court proceeded to direct the appellant, to pay an amount of Rs. 2,30,000/-, hence comprising 20% of the compensation amount, as determined by the learned Magistrate, to the complainant, within a period of 30 days, from its making the afore order i.e. 14.09.2021.

4. Tritely put the order, as made by the learned Appellate Court, on the application (supra), as, preferred by the convict, did not, as a preemptory pre-condition, for its taking effect, inasmuch as its suspending the execution of sentence of imprisonment, as imposed upon him, by the learned JMIC concerned, rather insist upon his depositing 20% of the compensation amount.

5. Therefore, if the afore order was ridden with a vice of infirmity, and, was amenable for being challenged by the complainant before the competent Court concerned. Necessarily, for want of its being evidently challenged, it acquired finality and conclusivity, and, was not reviewable at the instance of the learned First Appellate Court.

6. It appears that the order made on 14.09.2021, is a discreet, and, tacit attempt, on the part of the learned Appellate Court, to proceed to impermissibly review, and scuttle the effect of the binding order, as, made by it, and, as is embodied in Annexure P-3, wherein, as a precondition for suspending the execution of sentence of imprisonment, as imposed, upon the convict, by the learned JMIC concerned, it did not proceed to order that 20% of the compensation amount be deposited within any specified time period before the Court concerned.

7. Therefore, it is ridden with a vice of infirmity, if so, and, even if assuming the order made on 14.09.2021, did hold some aura or tinge of validity, yet until and unless there was some evidently deterrent circumstances,

prevailing upon the learned Appellate Court, as comprised in the appellant rather deliberately delaying the making of an expeditious decision, upon the appeal, as became preferred by him against the verdict of conviction, as, made upon him, by the learned Court, thereupon hence there was no occasion for the learned Appellate Court to make the order of 14.09.2021. Necessarily for evident non-existences thereof, it could not proceed to determine interim compensation nor it could proceed to make any interim directions upon the complainant. Even otherwise it was also legally incumbent upon the learned First Appellate Court, to order that in case there is allowing of the appeal, as preferred before it, by the accused-convict, thereupon the interim compensation, as determined, be restored or refunded to the accused – convict, by the complainant. However, the afore directions, as legally required to be made by the learned First Appellate Court, while being seized with an application, under Section 148 of the NI Act, are not existing, hence in the order, as, made on 14.09.2021. Therefore, on the afore ground also, it suffers from an infirmity.

8. Further there onwards, through an order made on 08.10.2021, for failure on the part of the appellant to make the afore payment, rather within the apposite stipulated period, he proceeded to order for launching of recovery proceedings against the convict – appellant, one Rajesh Kumar. The afore order is also challenged before this Court.

9. As stated (supra), though, for the reasons (supra), finality is assignable, to Annexure P-3. Nonetheless in the larger interests of justice, and, for revering verdicts pronounced by the Hon'ble Apex Court, hence mandating, that upon the Appellate Court concerned, proceeding to suspend the execution of sentence of imprisonment imposed, upon the petitioner, by the learned Convicting Court, it becoming incumbent upon it, to direct the convict to deposit some portion of the cheque amount. Therefore, upon revering the afore mandate of law, as made by the Hon'ble Apex Court, and, also de hors finality being assignable to Annexure P-3, this Court deems it fit to proceed to interfere with it, and, also proceeds to set aside, the order made on 14.09.2021, and, on 08.10.2021, with a direction to the convict / petitioner herein to, within one month from today, deposit 15% of the cheque amount before the learned Appellate Court concerned.

10. Disposed of.

11. Pending application stands disposed of.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Jasjit Singh Bedi, J.

CRM-M-45483-2017

Decided on: 25.04.2022

Harneet Kaur

Petitioner

Versus

State of Haryana & Anr

Respondents

Present: