

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr. MBCA No.70-D/2016

Saleemullah Khan
V
Jehanzeb Khan and 01 other

JUDGMENT

Date of hearing **08.3.2018**

Appellant-petitioner By: M/S Abdur Rashid Khan and Farooq
Akhtar Khan Advocate

Respondent By: M/S Saleem Ullah Khan Ranazai and Ahmad
Ali Khan Marwat Advocate and Adnan Ali Khan AAG

SHAKEEL AHMAD, J.- Through instant Cr. MBCA No. 70-D/2016, filed under section 497(5) Cr.P.C, the petitioner Saleemullah Khan seeks cancellation of post arrest bail of respondent No.1 in case FIR No.22 dated 05.01.2016 registered under Sections 489-F/420/468/471 PPC at police station Cantt, D.I.Khan.

2. Brief facts of the case are that on 13.12.2015, the complainant Saleemullah submitted an application to the District Police Officer, D.I.Khan, alleging therein, that the accused/respondent issued a cheque bearing No.2247738499 as a settlement of the dispute over the payment of money. The cheque in question was bounced when presented to the bank concerned for encashment. The report of the complainant was recorded vide daily diary report No. 41 dated 04.01.2015 and after inquiry, it was held that cognizable offence has been

committed by the accused, which resulted in registration of the FIR.

3. Having failed to get concession of the bail from the learned lower *fora* the petitioner applied for post arrest bail before this Court through Cr.Misc No. 18-D/2016. Vide order dated 25.8.2016, the accused was granted conditional bail, but the conditions as enumerated in the bail granting order was not honoured by the respondent (as alleged), hence, this petition.

4. It has mainly been argued by the learned counsel for the complainant that while granting post arrest bail certain conditions were imposed upon the respondent No. 1 which were not honoured by him; that neither the arbitrators for settlement of the disputed were contacted within 15 days from the date of passing of the order nor petition filed under section 22-A(6) Cr.P.C was withdrawn, thus, the accused misused the concession of bail, therefore, his bail is liable to be recalled.

5. Conversely, the learned counsel for the respondent argued that respondent No. 1 is a law abiding citizen of Pakistan and he always honoured the order passed by the Court. In pursuance of the conditional order dated 25.11.2016, passed by this Court, arbitrators were appointed and they resolved the dispute between the parties which is reflected from arbitration award dated 16.3.2016, wherein the parties as well as arbitrators put their signatures but even after lapse of considerable time petitioner neither acted upon the arbitration award nor honoured the compromise produced before this

Court; that the allegations of misused of the concession of bail is false, frivolous and after thought; that the petitioner was reluctant to act upon the arbitration award and deviated from the same, therefore, petition under section 22-A(6) Cr.P.C was not withdrawn. He lastly prayed for dismissal of the petition for cancellation of bail.

6. Arguments heard and record perused.

7. Before going to the merits of the case it will be advantageously to reproduce the relevant portion of bail granting order passed in Cr.MBA No. 18-D/2016 dated 25.01.2016, whereby the respondent was granted post arrest bail, as under:-

Facts of the case needs no narration because the parties have patched up the matter conditionally and the complainant has got no objection over release of the petitioner on bail. In this respect, an affidavit sworn by the complainant duly signed and attested by M/S Ahmad Ali Khan and Farooq Akhtar Khan, counsel for the parties was produced before the court, vide which the parties have appointed Arbitrators for settlement of the dispute within fifteen days from today which would be binding upon them and in case the dispute could not be settled within the stipulated period, the complainant would be at liberty to move for cancellation of the bail so granted to the petitioner and that the petitioner would also withdrawn his application filed under section 22-A (6) Cr.P.C.

8. A bare reading of the order referred above reflects that the accused was released on bail conditionally. It was observed by this Court that the parties shall settle the dispute through arbitrators and if the dispute cannot be settled within 15 days from the date of passing of order dated 25.01.2016, the complainant would be at liberty to move an application for cancellation of bail so granted and the respondent No.1 would withdraw the application under section 22-A(6) Cr.P.C moved by him for registration of the case against the petitioner, and failing to comply with the conditions enumerated in the affidavit would result the withdrawal of the order of this Court. The learned counsel representing the respondents produced the arbitration award dated 16.3.2016, wherein both the parties participated and arbitrators gave their award. The respondent No.1 as well as his counsel(s) submitted at the bar that they are willing and ready to act upon the arbitration award submitted by the arbitrators and also bound by the terms and conditions incorporated in the compromise deed in shape of affidavit produced before the Court in earlier round of litigation.

9. In my view the conditions stipulated in the order of this court dated 25.01.2016 were complied with. It was also pointed out that the parties are wrapped in civil litigations which are *sub judice* before the Court of competent jurisdiction regarding the same subject matter, thus no case is made out to recall the concession of bail already granted by this Court.

10. For what has been discussed above, the petition in hand, being devoid of merits is dismissed.

Announced
Dt:08.3.2018
Hasnain/*

JUDGE

(S.B)

Hon'ble Mr. Justice Shakeel Ahmad