**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No. 325 of 2019**

- Ashok Panchbhai S/o Late Kashiram Panchbhai Aged About 57 Years R/o E/3, L. I. C. Colony Mova Raipur District Raipur Chhattisgarh

**---- Petitioner**

**Versus**

1. State Bank Of India Through Branch Manager Ambikapur (P. D. D. ) Ambikapur District Surguja Chhattisgarh
2. State of Chhattisgarh Through Collector, Ambikapur,

**---- Respondents**

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| For Petitioner | : | Shri Anurag Jha, Advocate |
| For Respondent No.1 | : | Shri P.R. Patankar, Advocate |
| For Respondent/State | : | Shri R.K. Bhagat, Dy. GA |

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order On Board**

**08/02/2019**

1. Heard.

2. The present petition is against the order dated 14.12.2018 wherein the appellate Court in an appeal filed against the conviction made under Section 138(a) in The Negotiable Instruments Act, 1881 (hereinafter referred to as the Act, 1881) has directed to deposit 50% of the fine amount apart from the surety.

3. Learned counsel for the petitioner submits that the direction to deposit 50% of

the fine amount by the appellate Court is too stringent, which may be reduced as the petitioner cannot deposit the amount and it has taken away his valuable right of Appeal. It is stated that may be reduced to 20% as statutorily required. He further submits that the amendment in Section 148 in the Negotiable Instruments (Amendment) Act, 2018 would not apply in the given facts as the case was already pending earlier to the amendment of the Act as the Act came into force much later and further the provisions of CRPC also provides that the appellate Court may in its discretion pass certain suitable orders in the given facts of a case therefore, direction to deposit 50% of compensation is wrong. It is stated that in absence of deposit the amount, the appeal is not heard, whereby the right of the petitioner has been taken away.

4. Per contra, learned counsel for the respondents oppose the arguments advanced by learned counsel for the petitioner.

5. Perused the documents. The petitioner was convicted by order dated 28.11.2018 in a complaint case No.102/2010 by the JMFC, Ambikapur and was sentenced to 6 years simple imprisonment and to pay the compensation of Rs.1,70,000/- and in absence of payment of fine/compensation further 2 months imprisonment was ordered for. The said order was subject of appeal. The appellate court by its order dated 14.12.2018 directed for deposition of 50% of the compensation amount apart from surety & bail bond for suspension of sentence. The present petition is against the order directing deposition of 50% of the compensation amount. The arguments advanced by learned counsel for the petitioner cannot be sustained in the light of the amended provisions of

Section 148 of the Negotiable Instruments (Amendment) Act, 2018 which came into being on 22nd of August, 2018. The amendment being procedural in nature the argument of the petitioner that it will not have a retrospective effect is completely devoid of merits. Furthermore, the appeal has been filed after the amendment came into force. For the sake of brevity the amended Section 148 of the Negotiable Instruments (Amendment) Act, 2018 is reproduced hereunder:-

> '148. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:
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> Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.
>
> (2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.
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> (3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:
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> Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.''.

6. Reading of Section 148 would show that statutory bar has been created that the appellate Court shall not be entitled to reduce the fine or compensation amount less than 20%, however, may order for more deposit of that. The Act further

says, if the compensation/ or fine amount has been ordered to be deposited, then as per sub-section 2 of Section 148 it is to be deposited within 60 days from the date of order or within such further period not exceeding thirty days. In view of this, the order which has been passed by the Court below cannot be said to be without any jurisdiction as the Court has ordered for deposit of 50% of the compensation/fine amount. It would be incorrect to hold that beyond 20% the amount of fine could not be ordered. Unless & until the some extra ordinary circumstances are shown no interference can be made in such order.

7. Accordingly the petition being devoid of any merit is dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu