

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

(1) CRM-M No.3377 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(2) CRM-M No.3790 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(3) CRM-M No.3828 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(4) CRM-M No.3857 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(5) CRM-M No.3860 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(6) CRM-M No.3862 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent

(7) CRM-M No.3864 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent

(8) CRM-M No.3867 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent

(9) CRM-M No.3868 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent

(10) CRM-M No.3869 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent

(11) CRM-M No.3871 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(12) CRM-M No.3875 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(13) CRM-M No.3888 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(14) CRM-M No.3894 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(15) CRM-M No.3895 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

- (16)

CRM-M No.3904 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent
- (17)

CRM-M No.3906 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent
- (18)

CRM-M No.3912 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent
- (19)

CRM-M No.3913 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent
- (20)

CRM-M No.3921 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent

(21) CRM-M No.3924 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(22) CRM-M No.3925 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(23) CRM-M No.3926 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(24) CRM-M No.3929 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(25) CRM-M No.3932 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others
..... Petitioners

Versus

Virender Gandhi
..... Respondent

(26) CRM-M No.3949 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent

(27) CRM-M No.4018 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent

(28) CRM-M No.3369 of 2019 (O&M)

Surinder Singh Deswal @ Col. S.S.Deswal and others

..... Petitioners

Versus

Virender Gandhi

..... Respondent

(29) CRM-M No.10835 of 2019 (O&M)

Pawan Goyal

..... Petitioner

Versus

Dr. Prakash Rastogi

..... Respondent

(30) CRM-M No.50067 of 2018 (O&M)

Anurag Sharma

..... Petitioner

Versus

Cholamandlam Investment and Finance Limited

..... Respondent

(31) CRM-M No.6735 of 2019 (O&M)

Kuldeep Sharma and others

..... Petitioners

Versus

The Haryana State Coop. Supply &
Marketing Federation Ltd. (HAFED), Karnal and another

..... Respondents

(32) CRM-M No.10115 of 2019 (O&M)

Narender Kumar Mishra

..... Petitioner

Versus

Deepti Pant

..... Respondent

(33) CRM-M No.14793 of 2019 (O&M)

Anil Kumar

..... Petitioner

Versus

Mahender

..... Respondent

Date of Decision: 24.04.2019

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. R.S.Rai, Senior Advocate assisted by
Mr. Karan Sachdeva, Advocate for the petitioner(s).

Mr. Rose Gupta, Advocate for the petitioner
(in CRM-M Nos.14793 and 50067 of 2019).

Mr. Johan Kumar, Advocate for the petitioner
(in CRM-M-10835-2019).

Mr. Amit Kumar Jain, Advocate for the petitioners
(in CRM-M No.6735 of 2019).

Mr. Adish Gupta, Advocate for the petitioner
(in CRM-M No.10115 of 2019).

Mr. Amit Choudhary, Advocate for the respondent
(in CRM-M No.10115 of 2019).

Mr. Sudarshan Kumar, Advocate for respondent No.1
(in CRM-M No.6735 of 2019).

None for respondent No.2 despite service
(in CRM-M No.6735 of 2019).

Mr. Deepender Singh, Advocate for the respondent
(in CRM-M-10835-2019).

Mr. Gaurav Gaur, Advocate for the respondent
(in CRM-M No.50067 of 2018).

Mr. Mandeep Singh Khillan, Advocate
for the respondent(s).

MAHABIR SINGH SINDHU, J.

This order shall dispose off the aforementioned 33 petitions being identical on facts, involving the common questions of law.

2) The above petitions have been filed under Section 482 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) for quashing of impugned order(s), passed by learned Additional Sessions Judge(s), whereby the petitioner(s) have been directed to deposit 20/25% of the amount of compensation awarded by learned trial Court while suspending their sentence during pendency of the appeal(s) in view of the provisions of Section 148 of the Negotiable Instruments (Amendment) Act, 2018 (*for short 'Amendment Act, 2018'*).

3) With the consent of parties, the facts have been noticed from CRM-M-3377-2019, which, in brief, are as under:-

Petitioner No.3 i.e. M/s Bhoomi Infrastructure Company is a Firm, registered under the Indian Partnership Act, 1932, whereas petitioner Nos.1 & 2, being partners, are responsible for conducting day-to-day business as well as its affairs.

Initially, the respondent/complainant was also a partner in the above Firm having 7% share, but later on, it was reconstituted on 27.06.2011 and his share was enhanced to 16%. Again, some changes were made by way of Memorandum of Understanding (MoU) between the partners in terms of Flat Buyers Agreements and Mortgage Deeds dated 30.11.2013 & 01.12.2013, respectively. Thereafter, in terms of the above MoU, to compensate the respondent/complainant and in order to discharge the legal liability, petitioner(s) issued different cheques including Cheque No.665643 dated 31.03.2015 for an amount of ₹ 45,84,915/-, drawn on Canara Bank, Panchkula. The said cheque was presented by the respondent/complainant for encashment with his banker-Karnataka Bank Ltd., Sector 11, Panchkula on 06.04.2015, but the same was returned on 07.04.2015 with the remarks "*Funds Insufficient*". Consequently, statutory notice dated 06.05.2015 was issued to the petitioner(s) for making the payment, but of no avail and ultimately, that led to the filing of complaint dated 15.06.2015 under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'Act'*).

4) Learned trial Court, after following the due procedure, taking into consideration the entire material available on record and upon hearing

both sides, concluded that cheque in question was issued by the petitioner(s) in favour of the respondent/complainant for discharging their legal and enforceable liability and the same was dishonoured with the remarks "*Funds Insufficient*", but despite statutory notice, no payment was made. Hence, the petitioner(s) were held guilty under Section 138 of the Act, vide judgment dated 30.10.2018 and thereafter, on 13.11.2018, sentenced them to undergo simple imprisonment for a period of two years and to pay the fine equal to cheque amount plus 1% towards interest as well as litigation expenses jointly and severally within two months from the date of order i.e. 13.11.2018.

5) Aggrieved against the aforesaid judgment of conviction and order of sentence, petitioner(s) preferred appeal(s) along with application(s) under Section 389 Cr.P.C. for suspension of sentence before learned Additional Sessions Judge, Panchkula.

6) Paper-book reveals that learned Additional Sessions Judge, while passing the impugned order, issued notice of the appeal to the respondent/complainant and suspended the sentence subject to deposit of 25% of the amount of compensation awarded by learned trial Court within four weeks. It transpires that thereafter, an application dated 17.12.2018 (P-5) was filed for extension of four weeks' more time to deposit of 25% of the amount of compensation and the same was allowed, vide order dated 19.12.2018 (P-6).

7) It is contended by learned Counsel for the petitioner(s) that approach of learned Additional Sessions Judge while directing the petitioner(s) to deposit 25% of the amount of compensation awarded by

learned trial Court as a pre-condition to the suspension of sentence is not legally sustainable as in the present case(s), complaint was filed on 15.06.2015 and the amendment in the Act had taken place on 02.08.2018, thus, the provisions of amendment cannot be applied retrospectively being penal as well as substantive in nature.

8) On the other hand, learned Counsel for the respondent(s) opposed the submissions of the petitioner(s) and contended that learned Additional Sessions Judge has rightly imposed the condition of 25% of the amount of compensation in view of the provisions of Section 148 of the Amendment Act, 2018 as in the present case(s), the conviction was recorded on 30.10.2018, sentence was imposed on 13.11.2018, appeal was filed on 26.11.2018 and the Act has been amended on 02.08.2018, which ultimately came into force w.e.f. 01.09.2018.

9) Heard both sides and perused the paper-book.

10) The point for consideration in the present case(s) is as under:-

1. Whether the provisions of Section 148 of the Amendment Act, 2018, incorporated by way of Amendment Act No.20 of 2018 in the Act, are applicable to the present case(s) in view of the fact that initial complaint was filed on 15.06.2015 and the amendment had taken place on 02.08.2018, which came into force w.e.f. 01.09.2018?

11) Before proceeding further in the matter, it is necessary to reproduce the Amendment Act, 2018, which is as under:-

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 2nd August, 2018/Shravana 11, 1940 (Saka)

The following Act of Parliament received the assent of the President on the 2nd August, 2018, and is hereby published for general information:—

**THE NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2018
NO. 20 OF 2018**

[2nd August, 2018.]

An Act further to amend the Negotiable Instruments Act, 1881.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Negotiable Instruments (Amendment) Act, 2018.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), after section 143, the following section shall be inserted, namely:—

“143A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, 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.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.’’.

3. In the principal Act, after section 147, the following section shall be inserted, namely:—

“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:

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.

(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:

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.’’.

DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.

Thereafter, Ministry of Finance issued Gazette Notification dated 16.08.2018, appointing 1st day of September, 2018 as the date on which the provision of the above Act came into force and which reads as under:-

**MINISTRY OF FINANCE
(Department of Financial Services)**

NOTIFICATION

New Delhi, the 16th August, 2018

S.O.3995 (E). -- *In exercise of the powers conferred by sub-section (2) of section 1 of The Negotiable Instruments (Amendment) Act, 2018 (20 of 2018), the Central Government hereby appoints the 1st day of September, 2018, as the date on which the provisions of the said Act shall come into force.*

[F.No.6/5/2016-BO.II]

Dr. MADNESH KUMAR MISHRA, Jt. Secy.

12) A coordinate Bench of this Court in CRR No.9872 of 2018, titled as '**M/s Ginni Garments and another Versus M/s Sethi Garments**' along with other connected matters, decided on 04.04.2019, after taking into consideration the provisions of Section 143-A and Section 148 of the Amendment Act, 2018, held as under:-

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“ *Having heard the learned counsel for the parties and perusing the documents on record, it is clear that the dispute between the parties is relating to the applicability of Section 143-A and Section 148 of the Act, introduced vide Amendment dated 02.08.2018, to the cases which were already pending at the stage of the trial; or to the appeals arising from such trials, whether filed before or after the enforcement of the above-said provisions.*”

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“ *Since the provisions for recovery of fine or compensation from the appellant/convict already existed in the existing procedure relating to the recovery, therefore, the provision introduced vide Section 148 of the Act; which relates only to recovery of amount partly, as interim measure, has to be treated purely procedural only, which is otherwise also beneficial for the appellant as compared to the pre-existing provisions. Hence it has to be held*

that provision of Section 148 of the Act shall govern all the appeals pending on date of enforcement of this provision or filed thereafter.

This Court does not find any substance in argument of learned counsel for the petitioners that since the object and reasons for introducing the amendment relate to giving benefit to the complainant and do not relate to the procedure of the appeal, therefore, it cannot be treated to be a procedural step. As is noted above irrespective of the object and reasons of the act, the bare language of the provision only authorizes the Court to pass an interim order, which is only in modification of the procedure of recovery which already existed in the general provision of law relating to recovery of fine or compensation. Hence, for obvious reasons, the rationale qua objects and reasons of the Act, which is applicable at the stage of trial; cannot be imported to the stage of appeal. As mentioned above, at the stage of trial, the provision of Section 143-A of the Act has created a new 'obligation' against the accused, which was not contemplated by the existing law and which created a substantive liability upon him, whereas the provision of Section 148 of the Act only reiterated; and to some extent modified in favour of the appellant, the procedure of recovery already existing in the statute book. Still further, this Court does not find any force in the argument of the learned counsels for the appellants that Appellate Court could not have made the suspension of sentence of the petitioners conditional upon deposit of amount of interim compensation as ordered by Appellate Court. It deserves to be noted here that even suspension of sentence is in the judicial discretion of the Appellate Court. If the Appellate Court makes such judicial discretion subject to a statutory provision relating to deposit of interim compensation, then no fault could be found with such exercise of discretion. Moreover such a course of action even forms part of procedure prescribed under Section 424 Cr.P.C, though relating to a different type of suspension of sentence. But it shows that if the Appellate Court makes suspension of sentence subject to payment of statutory interim compensation or fine then such an order is in commensurance with the statutory provisions contained in Cr.P.C and the intention of legislatures as contained in Section 148 of the Act.

Accordingly all the petitions, wherein the order of the Trial Courts, directing the accused to deposit up to 20% of the cheque amount as interim compensation; are challenged, are allowed. Consequently, the Orders challenged in those petitions are set-aside.

The petitions where the challenge is to the order of the Appellate Court, directing the appellant to deposit 20% or more of the amount of fine or compensation as awarded by the Trial Court, are dismissed. Consequently, the Orders impugned in these petitions are upheld. ”

In view of the above, the point involved in the present case(s) has already been decided and the same is squarely covered by the judgment rendered in **M/s Ginni Garments (supra)**. Consequently, this Court has no option except to dismiss all the petitions.

Ordered accordingly.

April 24, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes