Sr. No.235

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

**CRM-M-6357-2019(O&M)
Date of decision:30.05.2019**

Rekha **...... Petitioner**

versus

**M/s Godara Wine Plot No.77, Vikas Nagar, Hisar and another
.......Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Rose Gupta, Advocate
for the petitioner.

Mr. Ajay Jain, Advocate
for respondent No.1.

Mr. M.D.Sharma, AAG, Haryana.

<u>Rajbir Sehrawat, J(Oral)</u>

Present petition has been filed seeking quashing of the Order dated 06.12.2018(Annexure P-3), passed by the learned Additional Sessions Judge, Hisar by exercising powers under Section 148 of the Negotiable Instruments Act(herein after referred to as 'the Act'), in an appeal against conviction and sentence in Complaint under Section 138 of the Act, thereby directing the appellant/petitioner herein to deposit 20% of amount of compensation awarded by the Trial Court, during the pendency of the appeal.

Learned counsel for the petitioner has submitted that the complaint under Section 138 of the Act in the case was filed way back on 12.03.2013. The petitioner was convicted and sentenced vide judgment/order dated 25.07.2017 and 26.07.2017. During the pendency of the appeal, the Appellate Court has passed the impugned Order dated 06.12.2018 (Annexure P-3), exercising powers under Section 148 of the

Act, whereby the petitioner has been directed to deposit 20% of the amount of compensation with the Appellate Court. It is submitted that Section 148 of the Act was introduced for the first time, on 02.08.2018. Learned counsel has submitted that any law which creates a new responsibility upon the appellant during pendency of the complaint or the appeal arising therefrom can not be applied retrospectively. Hence the provision contained in newly added Section 148 of the Act cannot be applied to the present appeal, which has arisen from the case where the trial was pending on the date of enforcement of the amended provision. To substantiate that, this provision casts a new substantive obligation upon appellant, the counsel has submitted that earlier there was no provision for directing the appellant to deposit 20% of amount of compensation. This provision has come during pendency of trial. Although at the conclusion of trial, the Trial Court can award a compensation in favour of the holder of the cheque in due course, however, since appeal is in continuation of the trial, therefore, fine or the compensation awarded by the Trial Court cannot be taken as final. But this provision forces the appellant to deposit a part of such compensation which is not even finally determined.

The above point of law, raised by learned counsel for the petitioner, has already been considered in detail and decided by this Court vide judgment dated 04.04.2019 rendered in another case i.e. ***M/s Ginni Garments and another vs.M/s Sethi Garments;*** **CRR No.9872-2018 (O&M).** In that case, it has been held that the procedure for recovery of fine or compensation from appellant in pending appeal already existed in CR.P.C even before advent of the provision as contained in Section 148 of the Act. Hence, no new aspect of coercive recovery of fine or compensation from the appellant is being freshly created through this amended provision. Rather this provision is beneficial to the convict/appellant because it reduces the liability of the appellant qua immediate deposit of fine or compensation, if not otherwise stayed by Appellate Court.

In view of the above, the present petition is dismissed. Order dated 06.12.2018(Annexure P-3) impugned in the present petition is upheld.

30th May, 2019 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*