IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19661-2019
Date of decision: 11.07.2019

Bara Singh **...Petitioner**

Versus

The Bathinda Central Cooperative Bank Ltd. **...Respondent**

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Deepak Aggarwal, Advocate
for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN, J. *(Oral)*

Prayer in the present petition is for quashing of the order dated 07.03.2019 (Annexure P-2), passed by the Sessions Judge, Bathinda by exercising powers under Section 148 of the Negotiable Instruments Act *(for short 'the Act')*, in an appeal against conviction and sentence in Complaint filed under Section 138 of the Act, thereby directing the appellant/petitioner herein to deposit 20% of the 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 was filed on 28.10.2016, vide which, the petitioner was held guilty for commission of offence punishable under Section 138 of the Act, vide judgment of conviction dated 02.03.2019 and order of sentence of the even date.

Learned counsel for the petitioner further submitted that during the pendency of the appeal filed by the petitioner, the lower appellate Court has passed the impugned order dated 07.03.2019 (Annexure P-2), exercising powers under Section 148 of the Act, whereby the petitioner has been directed to deposit 20% of the amount of compensation, awarded by the trial Court.

Learned counsel for the petitioner further argued that Section 148 of the Act came in force on 02.08.2018 and any law which creates a new responsibility upon the appellant during the pendency of the complaint or the appeal arising therefrom can not be applied retrospectively. Therefore, 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.

In order to substantiate his argument that this provision casts a new substantive obligation upon appellant, learned counsel for the petitioner has submitted that earlier there was no provision for directing the appellant to deposit 20% of amount of compensation and this provision is added during pendency of the 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, appeal being continuation of the trial, the fine or the compensation awarded by the trial Court cannot be taken as final.

The above point of law, raised by learned counsel for the petitioner, has already been considered in detail and decided by a Co-ordinate Bench of this Court in ***M/s Ginni Garments and another vs. M/s Sethi Garments and another, 2019 (2) R.C.R. (Criminal) 833***, wherein, 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 adding Section 148 of the Act. Therefore, no new aspect of coercive recovery of fine or compensation from the appellant is being freshly created through this amended provision. This judgment stands upheld by the Hon'ble Apex Court in ***Surinder Singh Deswal @ Col. S. S. Deswal and others vs. Virender Gandhi, 2019 (3) R.C.R. (Criminal) 186***.

Therefore, in view of the aforesaid judgments rendered in ***M/s Ginni Garments*** and ***Surinder Singh Deswal's cases (supra)***, the present petition is hereby dismissed and impugned order dated 07.03.2019 (Annexure P-2) is upheld.

11.07.2019 **(ARVIND SINGH SANGWAN)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*