

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

**CRM-M No.26792 of 2019 (O&M)
Date of Decision: 04.07.2019**

Krishan Kumar

.....Petitioner

Versus

Cholamandlam Investment & Finance Ltd.
through its GPA Holder-Vikas Yadav

.....Respondent

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Chander Pal Tiwana, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. against the order dated 23.05.2019 (P-1) passed by learned Additional Sessions Judge, Karnal, whereby petitioner has been directed to deposit 20% of the cheque amount during the pendency of the appeal.

Sole contention raised on behalf of the petitioner is that complaint under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'the Act'*) in this case was filed in the month of April, 2017 and the amended Act No.20 of 2018 came into force w.e.f. 02.08.2018, therefore, the amended provisions of Section 148 (1) of the Act are not applicable to the facts of the present case.

Heard learned Counsel for the petitioner and perused the paper-book.

The point raised in the present case has already been considered and decided on 24.04.2019 by this Court in CRM-M No.3377 of 2019 along with other connected matters and the same is upheld by the Hon'ble Supreme Court in Crl. Appeal Nos.917-944 of 2019, decided on 29.05.2019, while observing as under:-

“8. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which Section 148 of the N.I. Act came to be amended and therefore amended Section 148 of the N.I. Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under Section 138 of the N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I. Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in Section 148 of the N.I. Act and while suspending the sentence in exercise of powers under Section 389 of the Cr.P.C., when the first appellate court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the N.I. Act.

8.1 Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in

an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused-appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused-appellant has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.”

In view of the above, controversy regarding the applicability of the amended provisions of the Act in such like case(s) is no longer *res integra*, therefore, this Court is left with no option except to dismiss the present petition.

Ordered accordingly.

July 04, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>