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

CRM-M-39858 of 2019

Date of decision: October 22, 2019

Mahender

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Gaurav Singla, Advocate for the petitioner.

MAHABIR SINGH SINDHU, J

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 11.07.2019 passed by learned Additional Sessions Judge, Palwal, whereby the petitioner has been directed to deposit an amount of ₹20% of the cheque amount awarded by the learned Judicial Magistrate Ist Class, Bathinda (for short 'JMIC').

Sole contention raised on behalf of the petitioner is that complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'Act') was filed on 24.12.2015, whereas the Negotiable Instruments (Amendment) Act, 2018 (for short 'Amendment Act') came into force w.e.f. 01.09.2018 and as such, the same is not applicable to the facts of the present case.

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

The point raised in the present case has already been

considered and decided by this Court in CRM-M No.3377 of 2019 along with other connected matters, decided on 24.04.2019 and the same is upheld by the Hon'ble Supreme Court in the case of **Surinder Singh Deswal @ Col. S.S. Deswal and others versus Virender Gandhi**, JT 2019 (6) SC 240, and Paragraphs 8 and 8.1 of which read 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.”

Concededly, in the present case, petitioner was convicted and sentenced by learned JMFC vide judgment and order dated 12.06.2019 and an appeal thereagainst has been filed on 11.07.2019.

In view of the above, the controversy, in the present case, is securely covered by the judgment of Hon'ble Supreme Court in **Surinder Singh Deswal's** case (supra). Consequently, this Court is left with no option except to dismiss the petition.

Petition stands dismissed.

(MAHABIR SINGH SINDHU)
JUDGE

October 22, 2019
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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No