

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

(1) CRM-M No.37243 of 2019 (O&M)

Surinder Singh Deswal and others
..... Petitioners

Versus

State of Haryana and another
..... Respondents

(2) CRM-M No.37249 of 2019 (O&M)

Surinder Singh Deswal and others
..... Petitioners

Versus

State of Haryana and another
..... Respondents

(3) CRM-M No.37250 of 2019 (O&M)

Surinder Singh Deswal and others
..... Petitioners

Versus

State of Haryana and another
..... Respondents

(4) CRM-M No.37252 of 2019 (O&M)

Surinder Singh Deswal and others
..... Petitioners

Versus

State of Haryana and another
..... Respondents

(5) CRM-M No.37257 of 2019 (O&M)

Surinder Singh Deswal and others
..... Petitioners

Versus

State of Haryana and another
..... Respondents

(6) CRM-M No.37259 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(7) CRM-M No.37434 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(8) CRM-M No.37442 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(9) CRM-M No.37445 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(10) CRM-M No.37446 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(11) CRM-M No.37448 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(12) CRM-M No.37450 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(13) CRM-M No.37451 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(14) CRM-M No.37463 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(15) CRM-M No.37466 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(16) CRM-M No.37474 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(17) CRM-M No.37477 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(18) CRM-M No.37495 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(19) CRM-M No.37497 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(20) CRM-M No.37498 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(21) CRM-M No.37503 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(22) CRM-M No.37533 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(23) CRM-M No.37534 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(24) CRM-M No.37536 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(25) CRM-M No.37537 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(26) CRM-M No.37545 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(27) CRM-M No.37547 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

(28) CRM-M No.37550 of 2019 (O&M)

Surinder Singh Deswal and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

Date of Decision: 10.09.2019

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. R.S.Cheema, Senior Advocate assisted by
Mr. Ishan Khetarpal, Advocate for the petitioner(s).

MAHABIR SINGH SINDHU, J.

This order shall dispose off the aforementioned 28 petitions being identical on facts and involving the common question for adjudication.

2) All the petitions have been filed under Section 482 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) for setting aside the impugned orders dated 20.07.2019, passed by learned Additional Sessions Judge, Panchkula (*hereinafter referred as 'Appellate Court'*), thereby cancelling the suspension of sentence already granted to the petitioner(s) on account of their failure to deposit 25% amount of compensation in terms of the provisions of Section 148 of the Negotiable Instruments (Amendment) Act, 2018 (*for short 'Amendment Act'*), as directed by learned Appellate Court, vide order dated 01.12.2018 and upheld upto Hon'ble Supreme Court, titled as '**Surinder Singh Deswal @ Col. S.S. Deswal and others Versus Virender Gandhi**', JT 2019 (6) SC 240 (*hereinafter referred as 'Deswal's case'*).

3) For convenience, the facts are noticed from CRM-M No.37243 of 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 its day-to-day business.

Initially, respondent No.2/complainant was a partner in the above Firm having 7% share, but later on, it was re-constituted on

27.06.2011 and his share was enhanced to 16%. It transpires from the paper-book that 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. In view of the above MoU, to compensate the respondent/complainant and in order to discharge their legal liability, petitioner(s) issued 64 cheques for an amount of ₹ 37.61 Crores (₹ 20.30 Crores for retirement dues and ₹ 17.31 Crores as compensation) including Cheque No.665647 dated 31.03.2015 for an amount of ₹ 45,84,915/-. All the cheques were dishonored, resulting in filing of various complaint(s) under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'Act'*) on 04.08.2015 before learned Judicial Magistrate 1st Class, Panchkula (*hereinafter referred as 'trial Court'*).

4) Learned trial Court, after following due procedure, taking into consideration the entire material available on record and upon hearing both sides, held the petitioner(s) guilty under Section 138 of the Act, vide judgment dated 30.10.2018 and thereafter, vide order dated 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.

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

Learned Appellate Court issued notice of the appeal to the respondent/complainant and suspended the sentence of the petitioner(s) subject to deposit of 25% amount of compensation awarded by learned trial Court within four weeks from the date of passing of order dated 01.12.2018. Thereafter, on 17.12.2018, petitioner(s) moved another application for extension of four weeks' more time to deposit the above amount, which was allowed and time was extended, vide order dated 19.12.2018.

6) Aggrieved against the order dated 01.12.2018 for deposit of 25% amount of compensation, petitioner(s) preferred 33 quashing petitions under Section 482 Cr.P.C., but remained unsuccessful as all the petitions were dismissed by this Court, vide order dated 24.04.2019 while relying upon a decision dated 04.04.2019, rendered in a bunch of cases i.e. **CRR No.9872 of 2018 (O&M)**, reported as '**M/s Ginni Garments and another Versus M/s Sethi Garments**', 2019 (2) R.C.R. (Criminal) 833 (hereinafter referred as '**M/s Ginni Garments case**'). Dissatisfied with the order of this Court, the petitioner(s) preferred Special Leave Petitions, resulting in Criminal Appeal Nos.917-944 of 2019, but all were dismissed by the Hon'ble Supreme Court on 29.05.2019 (**Deswal's case**).

7) Despite the above factual position, petitioner(s) did not deposit the amount in question; rather avoided the proceedings before learned Appellate Court and that led to the passing of impugned order dated 20.07.2019. Hence, the present petitions.

8) It is contended by learned Senior Counsel for the petitioner(s) that the Appellate Court has adopted a totally wrong approach while cancelling the bail granted to the petitioner(s) merely on non-deposit of 25% amount of compensation and defeated their right of appeal against the judgment of conviction and order of sentence, passed by learned trial Court. Further contended that no such pre-condition for deposit of 25% amount of compensation under Section 148 of the Amendment Act can be imposed while suspending the sentence and at best, the same can be recovered as a fine in terms of the procedure prescribed under Section 421 Cr.P.C. In support of his contention, learned Senior Counsel has relied upon the judgment dated 18.07.2019, passed by the co-ordinate Bench of this Court, titled as '**Vivek Sahni and another Versus Kotak Mahindra Bank Ltd.**' (CRM-M Nos.29187 and 29188 of 2019) (*hereinafter referred as **Sahni's case***).

9) Heard learned Senior Counsel for the petitioner(s) and perused the paper-book.

10) Undisputedly, the petitioner(s) were convicted on account of the dishonor of cheque(s) for considerable amount and their appeals are pending before learned Appellate Court. The cheque(s) were issued on 31.03.2015, conviction was recorded on 30.10.2018 and the sentence was imposed vide order dated 13.11.2018 by learned trial Court. Initially, their sentence was suspended by learned trial Court uptill 12.12.2018, but in the interregnum, appeal(s) were preferred and learned Appellate Court, suspended their sentence vide order dated 01.12.2018 under Section

389(1) of the Cr.P.C., while directing as under:-

“ Considering the fact that final hearing of the appeal will take time, application under Section 389 Cr.P.C. filed by the appellants is allowed. Substantive sentence of the appellants shall remain suspended during the pendency of the appeal, subject to furnishing of bail bond and surety bond in the sum of ₹ 50,000/- with one surety in the like amount and also subject to deposit of 25% of the amount of compensation awarded by the learned trial court in favour of the complainant. The appellants are directed to deposit within four weeks from today by way of demand draft of the said amount in the name of the Court.

Bail bonds and surety bonds furnished. Same are accepted and attested.

*Case is adjourned to **16.02.2019**. Notice of the appeal be issued to the respondents for the date fixed on filing of RC/AD etc. ”*

As earlier noticed in para 5 of this order, a further period of four weeks was granted on the request of the petitioner(s) for deposit of the amount in question by learned Appellate Court, vide order dated 19.12.2018. Aggrieved against the above order for deposit of 25% amount of compensation, petitioner(s) approached this Court by way of 33 quashing petitions, but remained unsuccessful and lost up to Hon'ble Supreme Court (**Deswal's** case) and para Nos. 7.1, 8, 8.1, 9 & 10 of the same, being relevant, are reproduced as under:-

7.1 *The short question which is posed for consideration before this Court is, whether the first appellate court is justified in directing the appellants – original accused who have been convicted for the offence under Section 138 of the*

N.I. Act to deposit 25% of the amount of compensation/fine imposed by the learned trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under Section 389 of the Cr.P.C., considering Section 148 of the N.I. Act as amended?

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.

9. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the N.I. Act as amended, the appellate Court “may” order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court and the word used is not “shall” and therefore the discretion is vested with the first appellate court to direct the appellant – accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the N.I. Act as amended is concerned, considering the amended Section 148 of the N.I. Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the N.I. Act, though it is true that in amended Section 148 of the N.I. Act, the word used is “may”, it is generally to be construed as a “rule” or “shall” and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended Section 148 of the N.I. Act confers power upon the Appellate Court to pass an order pending appeal to direct the Appellant-Accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the Appellant-Accused under Section 389 of the Cr.P.C. to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the N.I. Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause

shown by the appellant. Therefore, if amended Section 148 of the N.I. Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the N.I. Act, but also Section 138 of the N.I. Act. Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonoured of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realize the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, the Parliament has thought it fit to amend Section 148 of the N.I. Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the N.I. Act and also Sec 138 of the N.I. Act.

10 *Now so far as the submission on behalf of the appellants, relying upon Section 357(2) of the Cr.P.C. that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in the case of Dilip S. Dhanukar (supra) is concerned, the aforesaid has no substance. The opening word of amended Section 148 of the N.I. Act is that “notwithstanding anything contained in the Code of Criminal Procedure.....”. Therefore irrespective of the provisions of Section 357(2) of the Cr.P.C., pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit*

such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court.

In view of the above and for the reasons stated herein above, impugned Judgment and Order passed by the High Court does not call for any interference.”

11) Also noteworthy to be recorded that when Hon'ble Supreme Court was not inclined to accept the prayer of the petitioner(s), then last attempt was made on their behalf to grant some more time for deposit of the aforesaid amount of 25% and the Hon'ble Supreme Court, while exercising the powers under Article 142 of the Constitution, granted four weeks' more time to deposit the amount in question with a specific direction as is clear from para 12 of the above judgment (**Deswal's** case) and which reads as under:-

“ In view of the above and for the reasons stated above, we see no reason to interfere with the impugned common judgment and order passed by the High Court dismissing the revision application/s, confirming the order passed by the first appellate court directing the appellants to deposit 25% of the amount of fine/compensation pending appeals.

The instant appeals are accordingly dismissed with the aforesaid observations and appellants are now directed to deposit the amount directed by the first appellate court within extended period of four weeks from today. ”

Despite the clear time limit fixed by the Hon'ble Supreme Court, no deposit has been made by the petitioner(s) till date; rather they have even stopped appearing before learned Appellate Court as is clear from the impugned order dated 20.07.2019 itself. Even thereafter, on 31.07.2019, petitioner(s) did not appear and now the matter is stated to be

pending on 09.10.2019. Thus, the petitioner(s) are misusing the judicial forums on one pretext or the other and have made the mockery of the orders, passed by the entire judicial hierarchy including the Hon'ble Supreme Court. There is no hesitation to record that all these petitions have been filed with an ulterior motive to prolong the litigation and to harass the respondent/complainant so that he may not get his lawful claim despite being successful up to the highest Court of this Country. Such litigants should be taken with stern hands to maintain the faith of the general public as well as the majesty of the law. Impugned order reveals that even on 01.07.2019, petitioner(s) moved applications for seeking exemption from personal appearance as well as to grant adjournment on the pretext that they were going to file some miscellaneous application(s) before the Hon'ble Supreme Court with a hope to get some more time for making the deposit of the amount in question, but no such order has been produced by them. Learned Appellate Court, while showing magnanimity and taking an undue lenient view, accepted the request of the petitioner(s) and granted them more time uptill 20.07.2019 to comply with the order for deposit of amount. Again on the next date of hearing i.e. 20.07.2019, two more applications of similar nature were filed on behalf of the petitioner(s) for seeking exemption from personal appearance as well as for adjournment of the appeal(s), but learned Appellate Court found no option except to reject the same and rightly so, while observing that their absence is intentional and they were avoiding the Court proceedings deliberately.

12) No doubt, the offence under Section 138 of the Act is bailable, but petitioner(s) stand already convicted and their sentence have been suspended under Section 389(1) of the Cr.P.C., which *inter alia* envisages that pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded in writing, order that the execution of the sentence or order appealed against be suspended and, also, that if he is in confinement, be released on bail. As noticed in para 10 of this order, the sentence of petitioner(s) was suspended by learned Appellate Court subject to deposit of 25% of the amount of compensation awarded by learned trial Court in favour of the respondent/complainant and also to furnish bail bond as well as surety bond in the sum of ₹ 50,000/- with one surety in like amount. Thus, it cannot be said that sentence of the petitioner(s) has been suspended unconditionally or as a matter of course.

Impugned order reveals that while cancelling the order of suspension of sentence, learned Appellate Court has directed the petitioner(s) to surrender before trial Court within four days from the date of passing of the order and in case of non-surrender, trial Court was directed to secure the presence of the petitioner(s) by issuing warrants of their arrest or by adopting other mode as per law to undergo the sentence awarded to them. The distinction while granting bail for the offence in case of bailable or non-bailable during trial is certainly a relevant factor, but after conviction, when the sentence is suspended under Section 389(1) of the Cr.P.C. subject to certain conditions incorporated in the order, then the same must be satisfied by the convict/appellant during pendency of

the appeal and in case there is a violation of the condition(s) imposed, then the Appellate Court can take the remedial measures including cancellation of the bail. In the present case, sentence of the petitioner(s) was suspended, but they are misusing the concession granted by learned Appellate Court and have obstructed the smooth functioning in the matter while not appearing during the proceedings. Thus, the conduct of the petitioner(s) after release on bail have put the judicial proceedings in jeopardy while not coming forward at the time of hearing and has resulted in miscarriage of justice as well as abuse of the process of the Court. It seems that petitioner(s) have taken the Appellate Court for ride and they are under the impression that their right to remain on bail is absolute, indefeasible and unquestionable in any manner under the pretext that offence for which they have been convicted is bailable. This perception of the petitioner(s) is sadly mistaken, as conducting of smooth judicial proceedings is the paramount consideration for both sides i.e. petitioner(s) as well as respondent/complainant and maintenance of the sanctity of the Court proceedings. Still further, as on date, suspension of sentence as well as bail bonds of the petitioner(s) stand cancelled by way of the judicial order of learned Appellate Court, thus, they were under obligation to surrender before learned trial Court forthwith and in any case, they cannot fall back on the plea that offence under Section 138 of the Act is bailable.

13) Concededly, till date, neither the petitioner(s) have made any deposit; nor coming forward to participate with the proceedings before learned Appellate Court; nor have surrendered before learned trial Court

in terms of the impugned order, therefore, in the opinion of this Court, they have no respect for the judicial orders, passed in the matter from time to time including by Hon'ble Supreme Court. While taking into consideration the track record of the petitioner(s), it can be safely said that present bunch of petitions is nothing, but hair-splitting the construction of Section 148 of the Amendment Act, which has already been duly answered by the Hon'ble Supreme Court with the result that Appellate Court is well empowered to impose the condition for deposit of 25% amount of compensation at the time of suspension of sentence. Once the condition for deposit of 25% is held to be valid and attained finality, then petitioner(s) have no choice except to fulfill their commitment. Thus, the irresistible conclusion is that petitioner(s) have taken the frivolous steps just to prolong the matter on one pretext or the other. More than sufficient opportunities have already been granted to them, but neither the amount in question has been deposited; nor they are appearing before learned Appellate Court and thus trying to hoodwink the Court proceedings. Undisputedly, the concession of suspension of sentence was granted to the petitioner(s) subject to the valid pre-condition for deposit of 25% amount of compensation in terms of Section 148 of the Amendment Act and in the eventuality of breach of the same, learned Appellate Court was not only competent to cancel the order of suspension of sentence, but was also fully justified to maintain the sanctity of the judicial proceedings and to uphold the dignity of the Court while passing the impugned order.

In the case(s) of this nature, if the steps for cancellation of

suspension of sentence had not been taken at this juncture by learned Appellate Court, then the Judicial Forums are likely to become the laughing stock at the hands of unscrupulous litigants, resulting into failure of rule of law and that would be travesty of justice.

14) The judgment dated 18.07.2019 in **Sahni's** case (supra), cited by learned Senior Counsel, is not helpful to the petitioner(s) in any manner due to the following reasons:-

In that case, the controversy was that two separate complaints, under Section 138 of the Act, were filed against the petitioners therein and simultaneously, proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (*for short 'SARFAESI Act'*) were also initiated by the complainant. It transpires that both complaints resulted into the conviction for commission of an offence under Section 138 of the Act and sentence of imprisonment for two years with a further direction to pay compensation equivalent to the cheque amount.

Above conviction and sentence were challenged by way of two separate appeals and sentence of the petitioners therein was suspended by the learned Appellate Court, vide order dated 02.04.2019 with the condition to deposit 20% (₹ 60 Lakh) of the amount of compensation, awarded by learned trial Court, under Section 148 of the Amendment Act.

Thereafter, in the proceedings under SARFAESI Act, two mortgaged properties were sold through different auctions i.e. one by sale of showroom for an amount of ₹ 1.21 Crores on 16.04.2019 and another

for ₹ 52 Lakh earlier thereto (total ₹ 1.73 Crores). During pendency of both the appeals, petitioners filed separate applications for adjustment of the amount recovered from them during the proceedings under SARFAESI Act, but both the applications were rejected by learned Appellate Court and that lead to the filing of two quashing petitions under Section 482 Cr.P.C. and in this regard, two questions were framed and question No.1 reads as under :-

“ Whether a convict under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the NI Act')while in appeal against the conviction is entitled to pray for adjustment of the amount already recovered under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') towards directions of the appellate court to deposit certain percentage of the compensation or fine under Section 148 of the NI Act or not particularly when it is not disputed that amount involved proceedings under the SARFAESI Act and the NI Act 1881 are arising out of same transaction? ”

While taking into consideration the factual background of the case regarding the recovery of an amount of ₹ 1.73 Crores by selling two mortgaged properties of the petitioners under SARFAESI Act and after relying upon the judgment of Hon'ble Supreme Court in '**D. Purushotama Reddy and another Versus K. Sateesh**', (2008) 8 SCC 505, the above point was answered in favour of the petitioners. As a result thereof, it was held that in a conviction, under Section 138 of the Act, the petitioners were entitled to adjustment of amount already recovered from them under

the SARFAESI Act for compliance of directions of the Appellate Court for deposit of percentage of compensation or fine in terms of Section 148 of the Amendment Act.

15) In addition to above, one more point i.e. question No. 2 was framed, which is as under:-

“ Whether on non-payment of the amount as directed under Section 148 of the Negotiable Instruments Act, 1881, bail granted to the appellant is liable to be automatically/consequently liable to be cancelled?”

It is noteworthy to mention here that from the perusal of entire order dated 19.07.2019, in **Sahni's** case (supra), it is nowhere discernible that there was any order of cancellation of bail/suspension of sentence under challenge before the co-ordinate Bench, therefore, the question framed was purely academic without any factual foundation.

It is well settled by the Hon'ble Supreme Court that *“the High Court may decline to answer a question of fact or a question of law which is purely academic or has no bearing on the dispute between the parties.....”* and reference in this regard can be made to '**Commissioner of Income-tax, West Bengal II Versus Smt. Anusuya Devi, AIR 1968 Supreme Court 779** (Para 10).

Again in the case of '**Sanjeev Coke Manufacturing Company Versus Bharat Coking Coal Ltd. and another', 1983 (1) SCC 147, para 11**, Hon'ble Supreme Court held that:-

“ Judicial pronouncements cannot be immaculate legal conceptions. It is but right that no important point of law should be decided without a proper lis between parties

properly ranged on either side and a crossing of the swords. We think it is inexpedient for the Supreme Court to delve into problems which do not arise and express opinion thereon. ”

Still further, in '**R.S. Nayak Versus A.R. Antulay**', 1984 (2)

SCC 183, para 69, the Hon'ble Supreme Court observed that:-

“ In view of the conclusions reached by us, we consider it unnecessary to ascertain which would be the authority competent to sanction prosecution of M.L.A. as envisaged by Section 6, though it must be frankly confessed that considerable time was spent in the deliberations in search of competent sanctioning authority. The vital question has become one of academic interest. We propose to adhere to the accumulated wisdom which has ripened into a settled practice of this Court not to decide academic questions. The question is left open. ”

Although in **Sahni's** case, the reasoning have been assigned while deciding question No.2 that “*there is no provision in Section 148 of the NI Act for recovery of defaulted amount against the appellant*” and that “*normally conditions for grant of bail cannot be made onerous for the accused*”, but these reasons are alien to the law laid down by the Hon'ble Supreme Court's judgment in **Deswal's** case, wherein it has been clearly held that the Appellate Court is well empowered to impose the condition for deposit of 25% amount of compensation, awarded by the trial Court while suspending the sentence.

Still further as discussed above, in para 10 of **Deswal's** case, Hon'ble Supreme Court has specifically held that “*irrespective of the provisions of Section 357(2) of the Cr.P.C., pending appeal before the*

first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court.”

Also necessary to recapitulate here that in **M/s Ginni Garments** case (supra), it has already been held that “*this Court does not find any force in the argument of learned counsels for the appellant 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.*”

Thus, with great respect and humility to the co-ordinate Bench, it can be realized that the reasons recorded while answering the question No.2 are incognizance of the law laid down by the Honb'le Supreme Court in **Deswal's** case as well as Single Bench judgment of this Court in **Ginni's** case and without taking into consideration the relevant statutory provisions for suspension of sentence as contained in Section 389(1) of the Cr.P.C.

Also pertinent to mention here that Hon'ble Supreme Court in a recent order dated 05.08.2019, passed in **SLP (Criminal) No.6940 of**

2019, tiled as '**R. Manimehalai Versus Banumathi**', imposed the condition upon the convict-appellant therein to deposit an amount of ₹ 3 Lakh before learned trial Court while suspending the sentence recorded by Courts below even without taking recourse to the provisions of Section 148 of the Amendment Act.

16) In view of the facts and circumstances, discussed hereinabove, this Court is of the firm opinion that impugned order(s), passed by learned Appellate Court while cancelling the suspension of sentence of the petitioner(s) on account of their failure to deposit 25% amount of compensation, are perfectly legal and justified, which do not warrant any interference by this Court by entertaining the present petitions under Section 482 of the Cr.P.C. Consequently, all these petitions are dismissed being devoid of any merits.

September 10, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes