IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

125

CRM-M-48921-2019
Date of decision: 18.11.2019

Baljinder Kaur .....Petitioner

Versus

Sohan Lal .....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Abhishek Bajaj, Advocate for the petitioner.

****

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") for setting aside order dated 14.10.2019 passed by the leaned Additional Sessions Judge, Kurukshetra in Criminal Appeal bearing No.CRA/293/2018 titled as "Baljinder Kaur Vs. Sohan Lal" whereby the petitioner was directed to deposit 20% of the compensation awarded by the trial Court within sixty days from the date of the order.

Briefly stated, the facts giving rise to the filing of the petition are that the respondent filed complaint bearing NACT No.641 of 2016, CNR No.HRKU03-006972-2016 dated 09.08.2016 titled as 'Sohan Lal Vs. Baljinder Kaur' under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the NI Act") pleading dishonouring of cheque No.004024 dated 20.06.2016, drawn for an amount of ₹13,50,000/- on Union Bank, Gita Niketan Branch, District Kurukshetra and issued in discharge of subsisting liability, on the ground of "funds insufficient" and failure of the present petitioner, arrayed as accused in the above said complaint, to pay the amount within a period of fifteen days of the notice served on her.

On trial, learned Judicial Magistrate 1st Class, Kurukshetra vide judgment of conviction dated 10.10.2018 held the petitioner to be guilty and convicted under Section 138 of the NI Act and vide order of sentence dated 10.10.2018 sentenced the petitioner to simple imprisonment for a period of six months and directed her to pay compensation to the tune of double of the amount of impugned cheque i.e. ₹13,50,000/-.

The petitioner filed the above referred appeal before the learned Additional Sessions Judge, Kurukshetra who vide impugned order directed the petitioner to deposit 20% of the compensation awarded by the trial Court within sixty days from the date of the above said order.

Learned counsel for the petitioner has submitted that under Section 148 of the NI Act, the appellate court has the discretion to direct payment of 20% of the amount awarded by the trial Court and it is not mandatory for the appellate Court to do so. Further the said power can be exercised by the appellate Court in accordance with the principles governing exercising of the judicial discretion. The impugned order is non-speaking one. The appellate Court also ignored the fact that the cheque in dispute was given to commission agent as security and not in discharge of legally enforceable debt. The petitioner is a poor widow and does not have the financial capacity to pay the amount. Learned counsel for the petitioner has accordingly prayed that the impugned order may be set aside.

Section 148 of the NI Act, inserted by the Negotiable Instruments (Amendment) Act, 2018 (20 of 2018) (w.e.f. 01.09.2018), provides as under:-

"148. Power to Appellate Court to order payment

pending appeal against conviction:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this subsection shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in subsection (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

In ***Surinder Singh Deswal @ Col. S.S. Deswal and otehrs Vs. Virender Gandhi, 2019 (2) NCC 633***, it was held by the Hon'ble Supreme Court that the provisions of Section 148 of the NI Act are retrospective in nature and ordering of payment to deposit minimum 20% of the fine or compensation awarded by the trial Court is mandatory. The relevant paras of judgment of the Hon'ble Supreme Court are reproduced 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.*

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 realise 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."

In view of the mandatory nature of the statutory provisions, the appellate Court was mandatorily required to direct the appellant-present petitioner to deposit 20% of the compensation awarded by the trial Court. In doing so, the appellate Court was not required to mandatorily assess merits of the appeal or look into financial circumstances of the convict. When viewed in this legal background, the impugned order cannot be said to be suffer from any material illegality or irregularity and ends of justice do not warrant setting aside of the same by exercise of powers under Section 482 of the Cr.P.C.

In view of the above, the petition, being devoid of any merit, is dismissed.

(ARUN KUMAR TYAGI)
JUDGE

18.11.2019
Vinay

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No