

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

122

CRM-M-1378-2020

Date of decision: 15.01.2020

Ram Singh

.....Petitioner

Versus

Tek Chand

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. S. K. Tripathi, 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 'the Cr.P.C.') read with Article 227 of the Constitution of India for quashing of order dated 08.11.2019 passed by the learned Additional Sessions Judge, Gurugram in Criminal Appeal No.CRA/541/2019 titled as 'Ram Singh Vs. Tek Chand' whereby the petitioner was directed to deposit amount of Rs.1,00,000/- being 20% of the compensation awarded by the trial Court on or before the next date of hearing.

2. Briefly stated, the facts giving rise to the filing of the petition are that the respondent filed complaint bearing NACT No.3613 of 2015 (CNR No.HRGR03-008409-2015 dated 20.07.2015) titled as 'Tek Chand Vs. Ram Singh' under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') pleading dishonouring of cheque No.181332 dated 30.05.2015, issued by the present petitioner arrayed as accused in the said complaint for an amount of Rs.5,00,000/- in discharge of subsisting legal liability, on the ground of "Funds Insufficient" and failure of the present petitioner to

pay the amount within the period of fifteen days from date of service of notice on him.

3. On trial, learned Judicial Magistrate 1st Class, Gurugram held the petitioner to be guilty and convicted him under Section 138 of the N.I. Act vide judgment of conviction dated 05.10.2019 and sentenced him vide order of sentence dated 09.10.2019 to undergo simple imprisonment for a period of six months and directed him to pay compensation to the tune of Rs.5,00,000/- payable either on expiry of period of appeal or on disposal of the appeal.

4. The petitioner filed above referred appeal before learned Additional Sessions Judge, Gurguram, who vide impugned order dated 08.11.2019 directed the petitioner to deposit amount of Rs.1,00,000/-, being 20% of the compensation awarded by the trial Court, on or before the next date of hearing.

5. Learned counsel for the petitioner has submitted that learned Additional Sessions Judge has erred in imposing the said condition. The judgment of conviction and order of sentence are already challenged in the appeal and have not yet attained finality. In view of mandatory provisions of Section 389 of the Cr.P.C., no such condition could be imposed on suspension of sentence and grant of interim bail. Newly inserted Section 148 of the N.I. Act is applicable only to complaint filed after amendment of the N.I. Act and did not have retrospective effect and was not applicable to the complaint filed by the respondent in the year 2015. Similar order passed by learned Sessions Judge, Faridabad was set aside by a Co-ordinate Bench of this

Court vide ***order dated 01.12.2017 passed in CRM-M-37682-2017***

(O&M) titled 'Arvind and another Vs. Joginder Singh Bedi' and in view of the observations in the above-said case, the operation of similar order has been suspended by another Co-ordinate Bench of this Court vide order dated 22.03.2018 passed in **CRM-M-12122-2018 titled 'Jatinder Kumar Sarita Vs. Usha Suri'**. Therefore, the impugned order may be set aside.

6. Section 148 of the N.I. Act, inserted by the Negotiable Instruments (Amendment) Act, 2018 (20 of 2018) w.e.f. 01.09.2018, reads 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."

7. In **Surinder Singh Deswal @ Col. S.S. Deswal and others**

Vs. Virender Gandhi, 2019 (2) NCC 633, Hon'ble Supreme Court has held that the provisions of Section 148 of the N.I. Act are retrospective in nature and Section 148 of the N.I. Act, as amended, will 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 complaint for the offence under Section 138 of the N.I. Act was filed prior to enactment of the Negotiable Instruments (Amendment) Act, 2018 (20 of 2018) w.e.f. 01.09.2018 and that though in amended Section 148 of the N.I. Act, the word used is "may", but considering the amended Section 148 of the N.I. Act as a whole to be read with the Statement of Objects and Reasons of amending the same, it is generally to be construed as a "rule" or "shall" and not directing of the appellant by the appellate court to deposit minimum of twenty per cent of the fine or compensation awarded by the trial Court is an exception for which special reasons have to be assigned.

8. Even though in the present case complaint under Section 138 of the N.I. Act was filed in the year 2015 but appeal challenging judgment of conviction dated 05.10.2019 and order of sentence dated 09.10.2019 was filed in November, 2019 after insertion of Section 148 in the N.I. Act w.e.f. 01.09.2018. Therefore, Section 148 of the N.I. Act is applicable in respect of the appeal filed by the petitioner challenging judgment of conviction dated 05.10.2019 and order of sentence dated 09.10.2019 passed against him. Even though learned Additional Sessions Judge, Gurugram did not make any specific reference to Section 148 of the N.I. Act but mere omission to mention the same is inconsequential as the Court having the power must be deemed to have

exercised the same. In view of the mandatory nature of the statutory provisions made in Section 148 of the N.I. Act the appellate Court was justified in directing the appellant (present petitioner) to deposit amount of Rs.1,00,000/- being 20% of the compensation awarded by the trial Court. In doing so, the appellate Court was not required to minutely assess merits of the appeal or look into financial circumstances of the convict and pass detailed order giving reasons for imposing the above said condition.

9. Section 148 (2) of the N.I. Act mandates that the appellant has to deposit the amount not less than 20% of the fine or compensation awarded by the trial Court within a period of 60 days which can be further extended by a further period of 30 days as may be directed by the Court on sufficient cause being shown by the appellant.

10. Section 389(1) of the Cr.P.C. empowers the Appellate Court to suspend the sentence and grant bail during pendency of the appeal. Section 357 (2) of the Cr.P.C. provides that compensation awarded out of fine in cases subject to appeal shall be payable after the period allowed for presenting the appeal has elapsed and if an appeal be presented after the decision of the appeal. In ***Dilip S. Dahanukar Vs. Kotak Mahindra Limited : 2007 (2) R.C.R. (Criminal) 636*** Hon'ble Supreme Court held the above-said statutory requirement be applicable also to compensation awarded under Section 357 (3) of the Cr.P.C. However, in ***Surinder Singh Deswal @ Col. S.S. Deswal's Case (Supra)*** Hon'ble Supreme Court held that in view of the opening words of amended Section 148 of the N.I. Act “notwithstanding anything contained in the Code of Criminal Procedure.....” irrespective of the

provisions of Section 357 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 minimum of 20% of the fine or compensation awarded by the trial Court.

11. It may also be observed here that Section 143-A(5) of the N.I. Act provides that the interim compensation payable under Section 143-A (1) of the N.I. Act may be recovered as if it were a fine under Section 421 of the Cr.P.C. but Section 148 of the N.I. Act does not contain any provision similar to that made in Section 143-A(5) of the N.I. Act for recovery of the amount ordered to be deposited under Section 148(1) of the N.I. Act as fine under Section 421 of the Cr.P.C. and absence of such provision is not without purpose and shows the legislative intent. Since Section 148 of the N.I. Act is special provision, which constitutes an exception to general rule of stay of recovery of fine or compensation during pendency of appeal embodied in Section 357(2) of the Cr.P.C., condition of deposit of the amount under Section 148(1) of the N.I. Act is intended/postulated to be mandatory requirement to be complied with for availing the protection of order of suspension of sentence and grant of bail during pendency of the appeal. It follows that in case of failure of the appellant to deposit the amount ordered to be deposited under Section 148(1) of the N.I. Act, the order of suspension of sentence and grant of bail during pendency of the appeal would stand cancelled and the appellant shall be liable to be taken in custody for execution of the sentence.

12. In view of insertion of Section 148 by the Negotiable Instruments (Amendment) Act, 2018 (20 of 2018) w.e.f. 01.09.2018 and law laid down by Hon'ble Supreme Court in *Surinder Singh Deswal @ Col. S.S. Deswal's Case (Supra)*, observations made by Co-ordinate Benches in order dated 01.12.2017 passed in *CRM-M-37682-2017 (O&M) titled 'Arvind and another Vs. Joginder Singh Bedi'* and order dated 22.03.2018 passed in *CRM-M-12122-2018 titled 'Jatinder Kumar Sarita Vs. Usha Suri'* (relied upon by the learned Counsel for the petitioner) regarding impermissibility of imposing of condition of deposit at the time of suspension of sentence and grant of bail during pendency of the appeal by the Appellate Court in complaint case under Section 138 of the N.I. Act do not hold good and are not applicable and of any help to the petitioner.

13. When scrutinized in this legal perspective, the impugned order does not 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. and the petition is liable to be dismissed.

14. However, it may be observed here that in the present case, the appellate court vide order dated 08.11.2019 directed the appellant to deposit the amount of Rs.1,00,000/- on or before the next date of hearing. In view of the fact that the appellant was bona fide litigating before this Court challenging the order passed by the appellate court, ends of justice require that the time for such deposit be extended in exercise of power under Section 482 of the Cr.P.C. by four weeks.

15. In view of the above, the petition, being devoid of any

merit, is dismissed. However, the petitioner is allowed to deposit the amount of Rs.1,00,000/- directed to be deposited by learned Additional Sessions Judge, Gurugram within extended period of four weeks from the date of receipt of certified copy of this order.

15.01.2020
Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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