

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

(I) CRM-M-15131-2020 (O&M)

Sudarshan Kumar**Petitioner**
Versus

Manish Manchanda**Respondent**

(II) CRM-M-11554-2020 (O&M)

Satish Kumar**Petitioner**
Versus

Manish Manchanda**Respondent**

(III) CRM-M-15189-2020 (O&M)

Sudarshan Kumar**Petitioner**
Versus

Manish Manchanda**Respondent**

Date of decision : 15.12.2020

CORAM : Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Vaibhav Sehgal, Advocate, counsel for the petitioner(s).

Mr. Nitin Thatai, Advocate for the respondent (s).

(proceedings conducted through video conferencing)

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Gurvinder Singh Gill, J.

1. The above mentioned three petitions are being taken up together as a common question of law is involved therein.

2. The petitioners in all the three cases were arrayed as accused in three different complaints filed against them by respondent/complainant Manish Manchanda under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act'), alleging therein that the cheques drawn by the accused, upon their presentation in the bank by the complainant for their encashment were dishonoured. The accused were tried by the Court of Judicial Magistrate First Class, Ludhiana and were found guilty and were imposed sentence of rigorous imprisonment for one year in each of the three cases and were also directed to pay compensation. The petitioners/accused, being aggrieved by the judgements holding them guilty preferred appeals in the Court of Sessions wherein at the time of the admission of appeals, the impugned orders dated 28.2.2020 (Annexure P-3 in all the cases) were passed. Since the impugned orders are absolutely identical, one such order as annexed in CRM-M-15131-2020 is reproduced herein below :

“Criminal Appeal received by entrustment. As there are fairly arguable points involved in the adjudication of the present appeal, hence, the present appeal is admitted for hearing, subject to just exceptions and to deposit of 20% of the compensation amount in view of latest amendment in Section 148 of Negotiable Instruments Act (applicable w.e.f. 01.09.2018), within one month from today. It is registered as Criminal Appeal. Now notice of this appeal be issued to the respondent through ordinary process as well as speed post on furnishing of speed post charges and copies of grounds of appeal within a week for 02.07.2020. Trial Court Record be also called for that date.

Along with the appeal, the appellant has also filed an application for suspension of sentence and bail during the pendency of the appeal. Hence, the sentence of the appellant is suspended and the

appellant is directed to submit the personal bond in the sum of Rs.50,000/- with one surety in the like amount, to the satisfaction of the Illaqa/Duty Magistrate within 15 days from today and the appellant shall furnish an affidavit in this court with regard to furnishing the personal/surety bonds on the next date. Copy of this order be forwarded to the learned Trial Court with the direction to send the bail bond and surety bond to this court immediately.”

3. The learned counsel while assailing the impugned orders dated 28.2.2020 has raised the following three submissions:

- (i) *that issuance of a direction under provisions of Section 148 of the Act to deposit an amount not less than 20% of the compensation amount is ‘discretionary’ and such discretion ought to be exercised judiciously by the Court having due regard to the financial position of the accused and that issuance of such a direction in the instant cases was uncalled for and unwarranted;*
- (ii) *that the impugned order suffers from an illegality inasmuch as the provisions of Section 148 of the Act specifically mandate that a period of 2 months, extendable by another month, shall be afforded to the appellant to deposit the amount as directed to be deposited whereas vide impugned orders, a period of only one month has been afforded;*
- (iii) *that a right to challenge conviction by way of filing an appeal, as enshrined in Section 374 of Cr.P.C., cannot be set at naught by imposing some unreasonable condition at the time of admission of appeal and that the admission of appeal cannot be made subject to any such condition;*

4. Opposing the petition, the learned counsel representing the respondent/complainant has vehemently argued that the lower Appellate Court having passed the orders in question in exercise of jurisdiction under statutory

provisions of Section 148 of the Act, the same cannot be called to question.

The learned counsel for respondent, while relying upon a judgement of Hon'ble Apex Court in Surinder Singh Deswal vs. Virender Gandhi (2019)11 SCC 341, has further submitted that the provisions of Section 148 of the Act regarding deposit of amount have been held to be in the nature of a 'rule' and that not awarding compensation would be an exception for which reasoning should be given by the Appellate Court.

5. I heard both the learned counsel. Each of the aforesaid three submissions raised above are being discussed individually herein under:

Submission no. (i) :

6. In order to consider as to whether a direction for deposit of a part compensation before the Appellate Court is a discretion or as to whether it is in the nature of a mandate, the provisions of the Section 148 of the Act (as amended in the year 2018) need to be borne in mind, which read as under:

“148. Power of 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 sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

- (2) The amount referred to in sub-section (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. The language of Section 148 of the Act would show that the amended provisions vest the Appellate Court with a discretion to direct deposit of an amount not less than 20% of the compensation amount as awarded by the trial Court. Although the word 'may' has been used in the Section but the Hon'ble Apex Court in Surinder Singh Deswal vs. Virender Gandhi (2019)11 SCC 341 has interpreted the said provisions to mean that issuance of such a direction is more in the nature of a mandate. The relevant extract from the aforesaid judgement reads as follows:

"8. 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.....”

8. Thus, as per ratio of Surinder Singh Deswal's case(supra), the power vested with the lower Appellate Court, though discretionary is supposed to be a 'rule' and said discretion should be exercised in all the cases unless there are some exceptional circumstances justifying deviation from the said rule. In the instant case, there were no such circumstances before the lower Appellate Court so as to justify non-deposit of an amount as provided under Section 148 of the Act. As such, the contention raised on behalf of petitioner in this regard cannot be accepted.

9. **Submission no. (ii) :**

Section 148 of the Act, while vesting the Appellate Court with a power to direct the appellants to deposit an amount not less than 20% of the compensation amount, also specifically prescribes the period during which such amount is required to be deposited. Sub-section (2) of Section 148 of the Act, wherein the said period is prescribed reads as under:

**“148. Power of Appellate Court to order payment pending
appeal against conviction-**

(1) x x x

(2) The amount referred to in sub-section (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) x x x”

10. A perusal of the aforesaid provisions of Section 148(2) of the Act would show that it is provided in unambiguous terms that the amount is required to be deposited within a period of 60 days which may further be extended by another 30 days. In the instant case, the lower Appellate Court having granted one month's period only for depositing the amount, the same is contrary to the provisions of the Act. Submission no. (ii), thus, does carry weight and the error as pointed above, needs to be rectified.

Submission no. (iii) :

11. Since the question raised herein pertains to admission of an appeal against conviction, it is apposite to first of all refer to the provisions under which a right to appeal is provided to a convict. The basic provisions as per the procedure laid down in Code of Criminal Procedure, 1973 are contained in Sections 372 and 374 of Cr.P.C. which read as under:

372. No appeal to lie unless otherwise provided. –

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which

an appeal ordinarily lies against the order of conviction of such Court.

374. Appeals from convictions. –

- (1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.
- (2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.
- (3) Save as otherwise provided in sub-section (2), any person, -
 - (a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or
 - (b) sentenced under Section 325, or
 - (c) in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate, may appeal to the Court of Session.
- (4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

12. Section 374 Cr.P.C. as reproduced above does not prescribe any condition for admission of an appeal. In other words, the provisions of the statute which vests a convict with a valuable right to challenge his conviction are not circumscribed by any conditions. Nor does any provision of the

Negotiable Instruments Act, 1881 refer to any pre-condition for availing a valuable right of first appeal. Section 148 of the Act just vests the Appellate Court with the power to direct the appellant to deposit an amount not less than 20% of the compensation amount but under no circumstances the same can be interpreted to be a condition pre-requisite for availing the right of appeal. Imposition of any condition at the time of suspending of sentence may be a different matter and the trial Court may in its wisdom, impose such a condition failing which the order suspending sentence may be vacated. In other words, his bail during the pendency of appeal may be cancelled upon failure of the appellant to comply with the direction of deposit of such amount as may have been directed by the Appellate Court.

13. The right to appeal against conviction is an invaluable statutory right vested upon a convict by Cr.P.C. which cannot be allowed to be defeated by imposing any condition for availing such right. In fact, while giving a wider connotation to Article 21 of Constitution of India, it can even be said that depriving a convict of his right to appeal by imposing any pre-requisite for availing his statutory right to challenge conviction in a higher Court would amount to depriving his liberty without adhering to the established procedure of law. Hon'ble Supreme Court in Babu Rajirao Shinde v. The State of Maharashtra (1971)3 SCC 337, observed that a convicted person must be held to be at least entitled to one appeal as a substantial right. In a subsequent judgement rendered in Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd (2007)6 SCC 528, the Hon'ble Supreme Court held as under:

“12. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the

Code. Right of Appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a Fundamental Right. Right of Appeal, thus, can neither be interfered with or impaired, nor it can be subjected to any condition.”

14. Even though the Negotiable Instruments Act, 1881 is a special Act and could override provisions of Cr.P.C., but there is no such specific provision in the Act which could be interpreted to mean that availing of right to appeal by a person convicted for an offence under the Act, has been made subject to some conditions. The submission, thus, made in this regard on behalf of the petitioner carries weight and deserves to be accepted .

15. As an upshot of the discussion made above, all the aforesaid three petitions are accepted in the following terms:

- (i) The condition made in the impugned orders wherein the admission of appeal has been made subject to deposit of 20% of the compensation amount is set aside and it is ordered that the appeals shall stand admitted before the lower Appellate Court. The petitioners are, however, directed to deposit an amount equivalent to 20% of the amount of compensation awarded by the trial Court within 60 days from today.
- (ii) In case the aforesaid amount is deposited within 60 days from today, the bail already granted vide order dated 28.2.2020 by lower Appellate Court shall continue subject to any such fresh conditions as may be imposed by lower Appellate Court.
- (iii) In case bail of any of the petitioner has been cancelled on account of non-deposit of the amount or has already been taken into custody, he shall be released forthwith on bail subject to any such conditions as may be imposed by the lower Appellate

Court. He shall, however, deposit the amount of 20% within 60 days from today.

- (iv) In case of failure to deposit the amount in question within a period of 60 days from today, it shall be open to the lower Appellate Court to cancel bail and to hear the appeal on merits, provided however, subject to any such general directions issued by the High Court in the matter of hearing of cases, having regard to the present circumstances of spread of pandemic COVID-19.

16. All the three petitions stand accepted accordingly.

15.12.2020
(*kamal*)

(GURVINDER SINGH GILL)
JUDGE

Whether reasoned / speaking? **Yes / No**

Whether reportable? **Yes / No**