

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Writ Petition No. 4636 / 2019

Navneet Singh Gogia and Anr. .. **Petitioners**

Versus.

Rahul C. Chandak Through C.A.
Mr. Brijballabh Chandak and Anr. .. **Respondents**

Alongwith

Writ Petition No. 4637 / 2019

Navneet Singh Gogia and Anr. .. **Petitioners**

Versus.

Sushma B. Chandak Through C.A.
Mr. Brijballabh Chandak and Anr. .. **Respondents**

Mr. Akhil Kurade i/by Mr. Majoj Harit and Company
for the Petitioner in both matters.

Mr. Pankaj Jain i/by P.D. Jain and Co., Advocate for
Respondent No.1 in both matters.

Mr. A.R. Patil, APP for State.

CORAM : SANDEEP K. SHINDE J.

DATE : 30th SEPTEMBER, 2021.

(Through Video Conference)

Oral Judgment : -

1. Rule.

2. Rule made returnable forthwith. Heard, finally with the consent of parties.

3. Taking exception to the order dated 1st August, 2019 passed in Criminal Appeal Nos. 382/2018 and 383/2018, Appellants therein, have filed these petitions under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short).

2. Background facts are as under;

(a) Appellants - Petitioners were convicted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ("N.I. Act' for short) in C.C. No. 4081/SS/2016 and C.C. No. 4001/SS/2016 vide judgment and order dated 5th June, 2018.

(b) The appeals against the conviction and sentence

were presented and filed on 11th June, 2018.

(c) On 14th June, 2018, Appellate Court granted bail to the Petitioners. Operative part of the order reads as under;

ORDER

1. Bail Application No.1083/2018 is allowed.
2. The applicants be released on execution of PR bond of Rs.25000/- each alongwith surety of the like amount before the Ld. Trial Court.
3. The applicants are directed to cooperate the court in earlier disposal of the present appeal.

(d) On 20th March, 2019, Complainant - Respondent moved an application under Section 148 of the N.I. Act, seeking directions to Appellants to deposit 50% of amount of cheque as a interim compensation.

(e) Appellants challenged the maintainability of the application on the following grounds.

(i) That complaints in question were filed prior to 1st September, 2018, a date on which amendment act no. 20/2018 came into effect;

(ii) sentence was suspended on 14th June, 2018 i.e. prior to amendment act came into force.

(iii) Though while suspending the sentence, Appellate Court was empowered to order deposit of such sum, however, having not ordered, Complainant cannot seek directions to deposit interim compensation.

(iv) That the Complainant has not made out any ground for reconsideration of order dated 14th June, 2018, by which appellants were granted bail;

It is therefore, contended that Appellants had no right to claim interim compensation.

3. The learned Sessions Judge vide order dated 1st August, 2019 directed Appellants to deposit 20% of compensation granted by the trial Court within sixty days from the date of the order.

4. Feeling aggrieved by order/s dated 18th August, 2019, these petitions were preferred.

5. Heard. Learned Counsel for the parties.

6. In the case of **Surinder Singh Deswal @ Col.S.S.**

Deswal Versus Virender Gandhi (2019) 11 SCC 341,
Hon'ble Apex Court has held, 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 which were filed even prior to 2018 Amendment Act i.e. 1st September, 2018. In Paragraph No. 11, the Hon'ble Apex Court has held that;

“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. The 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 dishonour 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 release the value of the cheque and having observed

that such delay has compromised the sanctity of the cheque transactions, 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 Objections and Reasons of the amendment in Section 148 of the N.I. Act and also Section 138 of the N.I. Act."

(emphasis supplied)

7. The dictum is, amended Section 148 of the N.I. Act confers power upon the Appellate Court to direct deposit the sum which shall not be less than 20 % of the fine or compensation, either on application filed by Original Complainant or even on application filed by Appellant - Accused under Section 389 of Cr.P.C. to suspend the sentence. Therefore, application moved by the Complainant on 29th September, 2019 under Section 148 claiming interim compensation was perfectly maintainable. Obviously, while granting bail to Appellants on 14th June, 2018,

Complainant had no notice or knowledge of an application moved by the Appellants - Accused. In consequence, I don't see any reason to interfere with the order impugned, in supervisory jurisdiction of this Court. Rule is discharged. Petitions are dismissed. All interim orders stand vacated.

(SANDEEP K. SHINDE, J.)

MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM

Digitally signed
by MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM
Date: 2021.10.04
20:23:45 +0530

Najeeb.