

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-37048-2021

Date of decision : 10.11.2021

Harwinder Singh

... Petitioner

Versus

Mohan Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Amandeep Singh Samra, Advocate
for the petitioner.

Mr.Ishan Gupta, Advocate
for the respondent.

VIKAS BAHL, J.(ORAL)

Present petition has been filed under Section 482 Cr.P.C. for quashing the order dated 20.08.2021 (Annexure P-1) passed by the Additional Sessions Judge, Sangrur in CRA-54-2021, arising out of complaint no.NACT-593-2018 (Annexure P-2), whereby the petitioner has been directed by the Court below to deposit an amount of Rs.5,00,000/-, i.e. 20% of the total compensation amount while exercising its power under Section 148 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act').

The brief facts of the case are that respondent Mohan Lal had filed a complaint under Section 138 N.I. Act (as amended up to date) read with Section 420 IPC against the present petitioner, on the ground that the petitioner had issued a cheque bearing no.663611 dated 01.03.2018 for Rs.9,00,000/- and another cheque bearing no.663614 dated 01.03.2018 for

Rs.8,50,000/- drawn on Punjab National Bank, Sangrur and upon dishonour of the same, on account of “insufficient funds”, the complaint under Section 138 N.I. Act read with Section 420 IPC was filed after issuance of legal notice to the petitioner herein. The Judicial Magistrate Ist Class, Sangrur, vide judgment dated 22.07.2021 convicted the petitioner under Section 138 N.I. Act and sentenced him to undergo rigorous imprisonment for two years along with fine of Rs.5000/- in default of which further rigorous imprisonment for one month was awarded. In addition to the above, the respondent-complainant was also awarded a total amount of Rs.25 lacs as compensation which included the cheque amount of Rs.17,50,000/- and an additional amount of Rs.7,50,000/-. The petitioner filed an appeal before the Additional Sessions Judge, Sangrur along with the application under Section 389 Cr.P.C. for suspension of sentence and his release on bail during the pendency of the appeal. While disposing off the application for suspension of sentence of the applicant, the Additional Sessions Judge directed the petitioner to deposit 20% of total compensation amount awarded by the trial Court within 60 days from the date of that order and it had been further stated that if the petitioner fails to pay 20% of the total compensation amount within the stipulated period, the order of suspension of sentence shall stand automatically vacated. The relevant portion of said order (Annexure P-1) is reproduced hereinbelow:-

“Perusal of the judgment dated 22.07.2021 further reveals that the learned trial Court has further directed the accused to pay compensation to the complainant to the tune of Rs.25,00,000/-. Therefore, in the light of the amended provision of Section 148 of the NI Act and the judgment of the Hon'ble Supreme Court in Criminal appeal Nos.917-944 of 2019 (arising out of SLP

(Criminal) Nos. 4948-2975/2019 Surinder Singh Deswal @ Col.S.S.Deswal Versus Virender Gandhi decided on 29.05.2019, the appeal is directed to deposit 20% of the total amount of compensation awarded by the trial Court within 60 days from today.

If the accused fails to pay the 20% of total compensation amount within the stipulated period, the order of suspension shall automatically stands vacated.

Let lower court record be summoned for 25.10.2021.”

Aggrieved by the said order, the present petitioner has filed the present petition.

Learned counsel for the petitioner has submitted that the impugned order dated 20.08.2021 is illegal and against law inasmuch it has been directed that in case 20% of the total compensation amount is not deposited, the order of suspension would automatically stand vacated. It is argued that the said direction is illegal inasmuch as in case, the petitioner is not able to pay the money as ordered, then the only course open would be to recover the amount by following the procedure as stipulated under Section 421 Cr.P.C., 1973 and the order of suspension of sentence could not be vacated, much less, automatically. In order to substantiate the above argument, learned counsel for the petitioner has relied upon a judgment of a co-ordinate Bench of this Court titled as “**Vivek Sahni and another vs. Kotak Mahindra Bank Ltd.**” reported as **2019(4) RCR (Criminal) 614.**

Per contra, learned counsel for the respondent-complainant has submitted that the impugned order is in consonance with the law laid down by the Hon'ble Supreme Court in **Surinder Singh Deswal @ Col. S.S. Deswal&Ors. vs. Virender Gandhi &Anr.**, reported as **2019(3) RCR**

Singh vs. Tek Chand reported as **2020 (2) RCR (Criminal) 448**, judgment dated 10.09.2019 passed in CRM-M-37243-2019 titled as “*Surinder Singh Deswal&Ors. vs. State of Haryana &Ors.*”, against which the appeal was dismissed by the Hon'ble Supreme Court on 08.01.2020 in Criminal Appeal Nos.1936-1963 of 2019 and also the judgment of a co-ordinate Bench of this Court in *M/s Ajju Mines and Minerals and another vs. M/s. JSC Ispat Private Limited and another*, reported as **2021(2) RCR (Criminal) 598** and has submitted that the judgment of co-ordinate Bench in *Vivek Sahni's* case (*supra*) relied upon by the learned counsel for the petitioner, has already been distinguished in *M/s Ajju Mines and Minerals's* case (*supra*) as well as in the judgment dated 10.09.2019 passed in CRM-M-37243-2019 and connected matters, which has been upheld by the Hon'ble Supreme Court.

This Court has heard learned counsel for the parties and perused the records.

The question that arises for consideration in the present case is as follows:

Q. Whether while suspending the sentence of the appellant/convict, the Appellate Court in an appeal against conviction under Section 138 of the N.I. Act, can impose a condition that on non-deposit of minimum of twenty percent of the fine/compensation awarded by the trial court, as ordered by the Appellate Court while exercising its powers under Section 148 of the NI Act, the benefit of suspension of sentence would be liable to be automatically/consequently vacated?

To answer the said question, it will be necessary to consider Section 148 and 143-A of the N.I. Act as well as the relevant judgments on the point.

are reproduced hereinbelow:-

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

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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.”

Section 143-A of the N.I. Act:-

"143-A. Power to direct interim compensation. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under section 138 may order the drawer of

the cheque to pay interim compensation to the complainant -

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, 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 case being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under [section 421](#) of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under [section 138](#) or the amount of compensation awarded under [section 357](#) of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section."

A perusal of Section 148 N.I. Act would show that it starts with

contained in the Code of Criminal Procedure, 1973”, in an appeal which has been filed against the conviction under Section 138 N.I. Act, the appellate Court has the power to ask the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation as awarded by the trial Court. Importantly, under sub-section (2), it has been mentioned that the amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order and the same is subject to an extension of another 30 days and thus, the maximum period provided for making the deposit is 90 days. A comparison of Sections 148 and 143-A would show that sub-section (5) as present in Section 143-A is conspicuously missing in Section 148. Sub-section (5) of Section 143-A states that the interim compensation payable under that Section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973. The legislative intent of not inserting a similar provision in Section 148 as provided under Section 143-A, thus, is very clear.

The Hon'ble Supreme Court in ***Surinder Singh Deswal @ Col.S.S. Deswal vs. Virender Gandhi*** [2019(3) RCR (Cr) 186], {for the sake of convenience, as there are two cases with the same party name, the judgment of the Hon'ble Supreme Court in “***Surinder Singh Deswal @ Col.S.S. Deswal vs. Virender Gandhi***”[2019(3) RCR (Cr) 186] will be hereinafter referred to as “***Surinder Singh Deswal***” (Ist case) and the judgment of a coordinate Bench, affirmed by the Hon'ble Supreme Court, titled as “***Surinder Singh Deswal & Ors. vs. State of Haryana & Anr.***” bearing CRM-M-37243/2019 will hereinafter be referred to as “***Surinder Singh Deswal***” (IInd case)}, had after considering all the issues/contentions, adjudicated upon the issue whether the first appellate

Court is justified in directing the appellant/convict, convicted under Section 138 N.I. Act, to deposit 25% of the compensation / fine imposed by the trial Court pending appeal, challenging the order of conviction and sentence, while suspending the sentence under Section 389 Cr.P.C. The relevant portion of the said judgment is reproduced hereinbelow:-

“4. The facts leading to the present appeals in nutshell are as under:

That criminal complaints were filed against the appellants herein – original accused for the offence under Section 138 of the N.I. Act. That the said criminal complaints were filed prior to 2.8.2018. That the learned trial Court vide judgment and order dated 30.10.2018 convicted the appellants for the offence under Section 138 of the N.I. Act and sentenced them to undergo imprisonment of two years and to pay cheque amount + 1% as interest and litigation expenses as fine.

4.1 Feeling aggrieved and dissatisfied with the order of conviction passed by the learned trial Court, convicting the appellants – original accused for the offence under Section 138 of the N.I. Act and the sentence imposed by the learned trial Court, the appellants – original accused have preferred criminal appeals before the first appellate Court – learned Additional Sessions Judge, Panchkula. In the said appeals, the appellants – original accused submitted application/s under Section 389 of the Cr. P.C. for suspension of sentence and releasing them on bail, pending appeal/s.

*4.2 That considering the provisions of amended Section 148 of the N.I. Act, which has been amended by Amendment Act No. 20/2018, which came into force w.e.f. 1.9.2018, **the first appellate Court, while***

suspending the sentence and allowing the application/s under Section 389 of the Cr.P.C, directed the appellants to deposit 25% of the amount of compensation/fine awarded by the learned trial Court.”

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5.4 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that even otherwise in the present case, the first appellate Court has interpreted the word “may” as “shall” in Section 148 of the N.I. Act and proceeded on the basis that it is mandatory for the appellate Court to direct deposit of minimum of 25% of the fine or compensation awarded by the trial Court for suspension of sentence.

5.5 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that the first appellate Court heavily relied upon the decision of the Punjab and Haryana High Court in the case of ***M/s Ginni Garments and another v. M/s Sethi Garments (CRR No. 9872 of 2018, decided on 04.04.2019)***, in which it was held that the appellate Court continues to have discretion as to the condition to be imposed or not to be imposed for suspension of sentence and it was further held that however in case discretion is exercised to suspend the sentence subject to payment of compensation/fine, such order must commensurate with Section 148 of the N.I. Act. It is submitted, however, in the present case, the appellate Court did not exercise discretion and proceeded on the assumption that it is mandatory to deposit 25% of the fine or compensation as a condition for suspension of sentence. It is submitted that therefore the High Court ought to have remanded the matter back to the appellate Court to decide on the question of suspension of sentence as per the decision in the case of *M/s Ginni Garments (supra)*.

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*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?***

7.2 While considering the aforesaid issue/question, the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, as amended by way of Amendment Act No. 20/2018 and Section 148 of the N.I. Act as amended, are required to be referred to and considered, which read as under:

*“The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. **This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.***

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of

cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:—

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that 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.

4. The Bill seeks to achieve the above objectives.”

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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 GarikapattiVeeraya (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, onpurposive 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.

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.”

A perusal of the above-extracted judgment would show that the Hon'ble Supreme Court while deciding the issue at hand had considered the ***“statement of object and reasons”*** of the amendment in Section 148 of N.I. Act as amended by way of Amendment Act no.20/2018. It was noticed that as per the said objects, the provisions have been amended to avoid delaying tactics of unscrupulous drawers of dishonoured cheques which have been arising out of easy filing of appeals and obtaining stay of proceedings, as a result of which, injustice is caused to the drawee / payee of a dishonoured cheque, who has to spend a considerable amount of time and resources in court proceedings, in order to realize the value of the cheque and such delays compromise the sanctity of cheque transactions, and thus, the Act was sought to be amended to provide relief to the drawee/payees of dishonoured cheques and to discourage frivolous litigation. It was further observed that while suspending the sentence in exercise of power under Section 389 of the Cr.P.C, the first appellate Court has the power to direct the compensation / fine of more than 20%, to be deposited by the appellant/convict within the time stipulated in the Section and the said power is in consonance with the ***“statement of objects and reasons”*** of the amendment in Section 148 of the N.I. Act. It was further observed that the said deposit could be sought from the appellant while suspending the sentence, on an application filed by the applicant / convict under Section 389 Cr.P.C.. In paragraph 10 of the said judgment, it was specifically

once the appeal against the order of conviction is preferred, fine is not recoverable during the pendency of the appeal and the order to deposit the fine is legally not sustainable, has no substance inasmuch as amended Section 148 N.I. Act starts with a non-obstante clause specifically stating “***notwithstanding anything contained in the Code of Criminal Procedure***” and thus, it was held that irrespective of the provisions of Section 357(2) Cr.P.C., the Appellate Court has been 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.

A co-ordinate Bench of this Court in ***Ram Singh's*** case (*supra*) after following the judgment of the Supreme Court in ***Surinder Singh Deswal's*** case (**Ist case**) (*supra*) had observed 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., in view of Section 143-A [sub-section (5)] but the same would not hold good in an order passed in exercise of power under Section 148 N.I. Act, as the said sub-section (5) is conspicuously missing and the same is not without purpose and shows the legislative intent. It was held that in case of failure of appellant to deposit the amount ordered under Section 148(1) of the N.I. Act, what follows is that 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 into custody for execution of the sentence. The relevant part of the said judgment is reproduced hereinbelow:-

“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.

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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 Coordinate 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.”

Another co-ordinate Bench of this Court vide judgment dated 10.09.2019 passed in CRM-M-37243-2019 and connected matters titled as ***“Surinder Singh Deswal and others vs. State of Haryana and another”*** (IIInd case) had distinguished the judgment of the co-ordinate Bench passed in **Vivek Sahni's** case (supra). The relevant portion of the said judgment is reproduced hereinbelow:-

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'scase**').*

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*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'scase**').*

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.... 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% (Rs. 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 Rs. 1.21 Crores on 16.04.2019 and another for Rs. 52 Lakh earlier thereto (total Rs. 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 Rs. 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?”

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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.”

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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, titled as 'R. Manimehalai Versus Banumathi', imposed the condition upon the convict-appellant therein to deposit an amount of Rs.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."

A perusal of the above judgment would show that in the said case, challenge was to an order dated 20.07.2019 vide which the Additional Sessions Judge, Panchkula, had cancelled the suspension of sentence granted to the petitioner therein, on account of their failure to deposit 25% of the amount of compensation, in terms of provisions of Section 148 of N.I. Act. Reliance had been placed upon the judgment passed by a co-ordinate Bench in **Vivek Sahni's** case (supra) (which is sought to be relied upon by

learned counsel for the petitioner in the present case as well). After considering the entire issue, it was observed that suspension of sentence was granted to the petitioner therein on account of the valid pre-condition of deposit of 25% of the amount of compensation/fine in terms of Section 148 of the amended Act N.I. Act and in the eventuality of breach of the same, the Appellate Court was fully competent to cancel the order of suspension of sentence. **Vivek Sahni's** case (supra) was distinguished on several grounds including the fact that in the said case there were simultaneous proceedings under Section 138 of the N.I. Act and the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'SARFAESI Act') and in the interest of equity it was required for the amount which had been recovered in the proceedings under the SARFAESI Act to be adjusted with the amount which was to be deposited under Section 148 in N.I. Act proceedings. With respect to the issue as to whether on non-payment of the amount, bail granted to the appellant was liable to be automatically / consequently cancelled, co-ordinate Bench in the above-extracted judgment observed that the reasoning given in the same was alien to the law laid down by the Hon'ble Supreme Court in **Surinder Singh Deswal's** case (Ist case) (supra) and thus, it had been affirmatively held that the order of Hon'ble Supreme Court while cancelling the suspension of sentence of the petitioner therein, on account of failure to deposit the 25% amount of compensation, was perfectly legal and justified and did not warrant any interference under Section 482 Cr.P.C. The said order of the co-ordinate Bench was challenged by Surinder Singh Deswal, the petitioner therein, before the Hon'ble Supreme Court by filing Criminal Appeal no.1936-1963 of 2019. The Hon'ble Supreme Court

dismissed the said criminal appeals and upheld the order passed by the coordinate Bench vide judgment dated 08.01.2020. The relevant portion of the aforementioned judgment has been reproduced hereinbelow:-

“.....The appellants filed an application under Section 482 Cr.P.C. seeking quashing of the part of the order dated 01.12.2018 passed by the learned Additional Sessions Judge, Panchkula, whereby the said Court has imposed a condition to deposit 25% of the amount of compensation while suspending the sentence.

6. The High Court vide its judgment dated 24.04.2019 dismissed the petition of the appellants under Section 482 Cr.P.C. and other connected petitions. The appellants preferred Special Leave Petition(Criminal) Nos.4948-4975/2019 before this Court against the judgment dated 24.04.2019 of the Hight Court of Punjab and Haryana at Chandigarh.

7. This Court vide its judgment dated 29.05.2019 dismissed the criminal appeals arising out of the SLPs (Criminal).....

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8.Shri Balbir Singh, learned senior counsel appearing for the appellants questioning the order of the Additional Sessions Judge dated 20.07.2019 and judgment of the High Court submits that by mere non-deposit of 25% of the amount of compensation as directed on 01.12.2018 cannot result in vacation of suspension of sentence. Learned counsel submits that the direction to deposit 25% of the compensation as directed by the trial court could not have been made under Section 148 of the NI Act. Section 148 of the NI Act having come into force on 01.09.2018 could not have been relied by the Courts below. Since, the complaint was filed in the year 2015 alleging offence under Section 138 of the NI Act which was much before the

enforcement of Section 148 of the NI Act. He further submits that non-deposit of 25% of the amount of compensation could not lead to vacation of the order suspending the sentence rather it was open to the respondents to recover the said amount as per the procedures prescribed under Section 421 Cr. P.C.

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*13.The second round of litigation which was initiated by the appellant by filing application under Section 482 Cr.P.C. was against the order dated 20.07.2019 passed by the Additional Sessions Judge, Panchkula by which Additional Sessions Judge held that the appellant having not complied with the direction dated 01.12.2018 to deposit 25% of the amount of compensation, the order of suspension of sentence shall be deemed to have been vacated. The order dated 20.07.2019 was an order passed by the Additional Sessions Judge on account of failure of the appellant to deposit 25% of the amount of compensation. The suspension of sentence on 01.12.2018 was subject to the condition of deposit of 25% of the amount of compensation, when the condition for suspension of sentence was not complied with, **learned Additional Sessions Judge was right in taking the view that order of suspension of sentence shall be deemed to have been vacated. Challenge to order dated 20.07.2019 has rightly been repelled by the High Court by its elaborate and well considered judgment dated 10.09.2019.***

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17.The judgment of Punjab and Haryana High Court in Vivek Sahni and another(supra) which has been relied by the learned counsel for the appellants has been noted and elaborately considered by the High Court in the impugned judgment. In paragraph 14 and 15 of the impugned judgment of the High Court

reasons have been given for distinguishing the Vivek Sahni' case.

18. The High Court is right in its opinion that question No.2 as framed in Vivek Sahni's case was not correctly considered. When suspension of sentence by the trial court is granted on a condition, non-compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.

19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.

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22. In view of the foregoing discussion, we do not find any merit in the submission of the appellants. The appeals are dismissed."

A perusal of the above-extracted judgment would show that a specific argument was raised by the appellant therein that on a non-deposit of 25% of the amount of compensation, order granting suspension of

sentence cannot be vacated and to recover the said amount, procedure prescribed under Section 421 Cr.P.C. would have to be followed. The said argument was rejected and it was specifically observed in paragraphs 17 and 18 that the judgment of the co-ordinate Bench of this Court in **Vivek Sahni's** case (supra) had not correctly answered question no.2 and it had been observed that while suspension of sentence is granted by the appellate Court on a condition, non-compliance of the said condition would result in the vacation of the suspension of sentence.

Another co-ordinate Bench of this Court in **M/s Ajju Mines and Minerals'** case (supra) had also distinguished **Vivek Sahni's** case (supra) in the following terms:-

*“.....The reliance made by the petitioner on **Vivek Sahni's case supra**, is also of no avail in view of the fact that now the law has been laid down by the Hon'ble Supreme Court **Surinder Singh Deswal and Ors. (supra)**. Learned counsel for the respondent has brought to the notice of this Court that against the judgment passed by this Court in **Vivek Sahni's case**, an SLP was also preferred which has been dismissed by the Hon'ble Supreme Court on 2.12.2019. However, a perusal of the same would show that the said SLP has been dismissed in limine and special leave was not granted and therefore, it does not lay down any law. However, on the other hand, the Hon'ble Supreme Court in **Surinder Singh Deswal and Ors. (supra)** laid down the law in this regard by observing that if a condition of bail which was granted under Section 148 of the Act is violated and the amount is not deposited, then the bail is liable to be vacated.*

22.In view of above, all the above six petitions of the petitioner are hereby dismissed. However, there shall be no order as to costs.”

A perusal of the provisions of Section 148 N.I. Act as well as the law laid down in the abovesaid judgments affirmatively bring out that *notwithstanding anything contained in the Cr.P.C.,1973*, wherein appeal is filed against conviction under Section 138 N.I.Act, the Appellate Court has the power to ask the appellant to deposit such sum which shall be a minimum of 20% of the fine or the compensation awarded by the trial Court and since the said amount is to be deposited within the time as mentioned in sub section (2) of Section 148 N.I.Act and the said time cannot be extended beyond the period of 90 days, it is, thus, clear that the Appellate Court has the power to grant suspension of sentence by imposing the condition of deposit and also stipulate in the order that in case the said amount is not deposited, the suspension of sentence so granted would be automatically vacated and even if the said condition is not specifically mentioned in the order while granting suspension of sentence, the appellate Court would have the power to vacate the order of suspension of sentence on non-deposit of said amount. Any other interpretation of the said provision, more so, the interpretation to the effect that the amount so ordered to be deposited is to be recovered as fine under Section 421 Cr.P.C., would completely defeat the object of the amendment and instead of checking the delay in providing relief to the holder of cheque in due course, would in fact result in multiplicity of proceedings for recovery of the said amount which was not even remotely the object of the Amending Act. In ***Vivek Sahni's*** case (supra) while considering question no.2 i.e. “***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 cancelled?”, the Court had observed that in case of non-deposit, the only recourse was to recover the same under Section 421 Cr.P.C. With respect to the said judgment, suffice it to say that another co-ordinate Bench of this Court in ***Surinder Singh Deswal's*** case (**IInd case**) (supra) had observed that question no.2 as framed therein, which is relevant in the present case, was not in consonance with the law laid down by the Hon'ble Supreme Court in ***Surinder Singh Deswal's*** case (**Ist case**) (supra) and the said finding of the co-ordinate Bench has been upheld by the Hon'ble Supreme Court vide judgment dated 08.01.2020 which has been reproduced hereinabove. It would also be relevant to point out that although the judgment of ***Surinder Singh Deswal's*** case (**Ist case**) (supra) was delivered on 29.05.2019 but the said judgment was not brought to the notice of the co-ordinate Bench of this Court in the judgment of ***Vivek Sahni's*** case (supra) which was delivered on 18.07.2019. Further, the facts in ***Vivek Sahni's*** case were completely different inasmuch as two proceedings were initiated against the petitioner therein, one under Section 138 N.I. Act and another under the SARFAESI Act and huge amount had been recovered under the SARFAESI Act, which was ordered to be adjusted in the amount to be deposited in the appeals pending against conviction under Section 138 N.I.Act. Thus, keeping in view the authoritative pronouncement of the Hon'ble Supreme Court in ***Surinder Singh Deswal's*** case (**Ist Case**) and judgment dated 08.01.2021 passed in ***Criminal Appeal Nos. 1936-1963 of 2019*** and also the provisions of Section 148 and 143-A of the N.I. Act, the question formulated is answered in the following terms:

That the Appellate Court in an appeal against conviction under Section 138 of the N.I Act, while suspending the sentence of the Appellant/Convict, has the power to impose a condition that on non-deposit of the fine/compensation, the benefit of suspension of sentence would be liable to be automatically/consequently vacated.

Before parting with this order, it would be relevant to mention that on 05.10.2021, this Court was pleased to issue notice of motion and notice regarding stay and the petitioner was directed to deposit Rs.1,50,000/- as undertaken by the petitioner and in the order dated 13.10.2021, it was submitted that the petitioner had deposited Rs.1,50,000/- in pursuance to the order dated 05.10.2021 and since the respondent was not served on the said date, the Appellate Court was directed to give a date beyond the date fixed by this Court. The period of 60 days in the present case has already elapsed on 18.10.2021 and 90 days would elapse on 18.11.2021. Since the present petitioner has been pursuing the present litigation and has not delayed the matter in any manner, thus, the petitioner is permitted to deposit the balance amount of Rs.3.5 lacs by 18.11.2021. For the said purpose, reference can also be made to the judgment of Hon'ble Supreme Court of India in *Surinder Singh Deswal's* case (Ist case) (supra) and co-ordinate Bench in *Ram Singh's* case (supra).

With these observations, the present petition is dismissed and the impugned order dated 20.08.2021 is upheld.

(VIKAS BAHL)
JUDGE

November 10, 2021

Davinder Kumar

Whether speaking / reasoned: Yes/No

Whether reportable: Yes/No