115+116

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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Reserved on : 23/11/2021
Pronounced on: 30/11/2021

[1] CRR-1375-2021 (O&M)

Simarpal Singh Wadhawan

Petitioner

Versus

M/s Dinesh Steel through its Proprietor Davesh Kumar

Respondent

[2] CRR-1377-2021 (O&M)

Sarabjeet Singh Wadhawan

Petitioner

Versus

M/s Dinesh Steel through its Proprietor Davesh Kumar

Respondent

[3] CRR-1378-2021 (O&M)

M/s Klassic Industries and another

Petitioners

Versus

M/s Dinesh Steel through its Proprietor Davesh Kumar

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S.S. Sawhney, Advocate and
Mr. Rahul Makkar, Advocate for the petitioners.

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AVNEESH JHINGAN, J.

[1] Three criminal revision petitions are filed aggrieved of the impugned orders dated 6th October, 2021. The prayer for waiver of pre-deposit under Section 148 of the Negotiable Instruments Act, 1881

[for brevity 'the Act'] was rejected. The petitioners were directed to deposit 1/3rd each of 20% of the compensation within a period of one month failing which order of suspension of sentence would be recalled.

[2] Brief facts of the case are that complainant M/s Dinesh Steel was supplying raw material to M/s Klassic Industries [for short 'firm'] on credit basis, on the agreed terms and conditions. During the course of business an amount of Rs. 71,49,773/- was due from firm for the goods supplied, a cheque was issued under the signatures of Manjit Kaur, Partner of firm. On presentation, the cheque was dishonoured due to insufficient funds. After serving the legal notice, complaint under Section 138 of the Act was filed. Vide judgment dated 3rd March, 2020, the accused were convicted under Section 138 of the Act. Vide order dated 8th October, 2020, Simarpal Singh Wadhawan, Sarabjeet Singh Wadhawan and Manjit Kaur were sentenced to undergo simple imprisonment for one year and the accused were directed to pay compensation of Rs. 1,05,00,000/-.

[3] Aggrieved of the conviction, appeals were filed alongwith applications for suspension of sentence with the prayer for waiver of condition of pre-deposit. Vide order dated 6th January, 2021, sentence was suspended subject to furnishing bail bonds of Rs. 1,00,000/- and making pre-deposit of 20% of the compensation amount within a period of one month.

[4] Revision Petitions were filed against the orders of pre-deposit. This Court on 1st October, 2021, set aside the impugned orders

and the matter was remanded back to be decided afresh in view of decision of the Supreme Court in ***Surinder Singh Deswal @ Col. S.S. Deswal and others Versus Virender Gandhi, (2019) AIR SC 2956.*** After remand, vide orders dated 6th October, 2021, the petitioners were directed to make pre-deposit of 1/3rd of 20% of the compensation amount within a period of one month hence, these criminal revision petitions.

[5] Following common arguments were raised by learned counsel for the petitioners in all the three petitions:-

- That complaint under Section 138 of the Act was liable to be dismissed as the amount of cheque presented was more than the liability. Contention is that liability of petitioners was Rs. 70,09,773/- whereas cheque presented was of Rs. 71,49,773/-. Reliance is placed on the decisions of Delhi High Court in ***Lyca Finance Ltd. Versus State and another, (2016) SCC Online Del 4198*** and ***Alliance Infrastructure Project Pvt. Ltd. and others Versus Vinay Mittal, ILR (2010) III Delhi 459***.

- It is argued that petitioners were able to rebut presumption under Section 139 of the Act that cheque was given for security purpose but misused for filing the complaint.

- The contention is that there is financial crisis due to COVID-19 situation and petitioners have no means to deposit the amount.

[6] In petition filed by Simarpal Singh Wadhawan (CRR-1375-

2021), it is argued that petitioner resigned from the partnership prior to dishonour of cheque. He was a sleeping partner and not a signatory to the cheque. It is contended that the conditions of Section 141 of the Act are not fulfilled.

[7] In petition filed by Sarabjeet Singh Wadhawan (CRR-1377-2021) it is argued that petitioner was neither a partner nor a signatory to the cheque. He is husband of Manjit Kaur (petitioner No.2 in CRR-1378-2021) and father of Simarpal Singh Wadhawan. Contention is that the conditions of Section 141 of the Act are not fulfilled. Reliance is placed upon decisions of the Supreme Court in ***Monaben Ketanbhai Shah Versus State of Gujarat, (2004) 7 SCC 15; S.M.S. Pharmaceuticals Ltd. Versus Neeta Bhalla and another, (2005) 8 SCC 89; Ranrajsingh Versus State of Madhya Pradesh and another, (2009) 6 SCC 729*** and ***A.K. Singhaniya Versus Gujarat State Fertilizer Company Limited and another Versus (2013) 16 SCC 630.***

[8] Section 148 of the Act is reproduced:-

> "***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."

[9] The Supreme Court in ***Surinder Singh Deswal's case (supra)*** dealing with the 2018 amendment of Section 148 of the Act held as under:-

"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, <u>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."</u>*
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> ....*(emphasis supplied)*

[10] The issue which arises in these petitions is:

> Whether in the facts and circumstances, is it a fit case for making an exception for waiver of minimum pre-deposit of 20% of compensation awarded by the trial Court ?

[11] It would not be appropriate at this stage for this Court to dwell in detail on the contentions raised on the merits of the case. However, it would not be out of place to mention some of the findings recorded in the judgment of conviction.

[12] The trial Court noted the fact that in the statements recorded under Section 263 (g) Cr.P.C., similar defence was taken by all the accused. However, it was asserted that they were ready to pay principal amount in installments without interest but denied the liability to pay Rs. 71,49,763/-. The complainant proved its case by producing ledger accounts, debit notes and vouchers.

There was admission of DW-1 Sarabjeet Singh Wadhawan and DW-2 Simarpal Singh Wadhawan that their signatures and Manjit Kaur's signature were there on the bills, invoices, confirmation of balance and debit notes. The trial Court noted the fact that exhibits C27 to C29 i.e. 'balance confirmation' had signatures of Sarabjeet Singh Wadhawan. DW-1 Sarabjeet Singh Wadhawan in his deposition stated that he used to look after the day-to-day affairs of firm in which his wife Manjit Kaur and son Simarpal Singh Wadhawan were partners. He admitted his signatures on balance confirmation and the fact that on the interest paid, tax was deducted at source as per provisions of the Income Tax Act, 1961 and there was 'interest rate settlement' of 30% on the delayed payment. From his deposition, it revealed that payment of Rs. 25,000/- through R.T.G.S. was made to complainant on 5th July, 2017 and it was settled between the parties to pay the amount in installments of Rs. 1,50,000/- and 80-90 cheques were issued for the payment of installments. The Income Tax Return ('ITR') of the complainant for the Assessment Year 2018-19 was exhibited showing firm as sundry debtors to the tune of Rs. 70,09,773/-. In the cross-examination, DW-2, Simrapal Singh Wadhawan deposed that presently there were two partners in firm i.e. Sarabjeet Singh Wadhawan and Manjit Kaur, earlier he was partner with Manjit Kaur. The trial Court noted the fact that Simarpal Singh Wadhawan in his statement recorded under Section 263 (g) Cr.P.C., never mentioned the fact of his resignation from the firm. The cheque was issued by Manjit Kaur, Partner of firm for a sum of Rs. 71,49,773/-. The difference between the amount shown in ITR and cheque amount was explained by the complainant.

[13] It would be pertinent to quote the relevant paragraph of decision in ***Surinder Singh Deswal's case (supra)*** where reasons and objects of the amendment were dealt with:-

> *"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:*
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> > *"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*
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> *(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."*

[14] It is settled law that general rule under Section 148 of the Act is of pre-deposit and waiver is only an exception for which special reasons need to be assigned.

[15] It would not be appropriate to pre-judge the appeal at the stage of deciding the waiver of pre-deposit. The petitioners have filed Criminal Miscellaneous Applications annexing their bank account statements and their concerns to support the contention that they are not financialy capable to make the pre-deposit.

[16] There is no pleading that firm is not continuing with its business. Mere balance of the bank account cannot form a basis for inability to pay. It is business prudence of an entrepreneur to manage its affairs and to fix the priorities.

[17] The trial Court considering the facts and appreciating the

evidence adduced convicted petitioners under Section 138 of the Act. The difference in the amount of cheque and the figure mentioned by the petitioners was duly explained by the complainant. The defence raised that it is a case of misuse of cheque for security, was met by the complainant by producing documents. The reliance on ***Lyca Finance Ltd.'s case (supra)*** and ***Alliance Infrastructure Project Pvt. Ltd.'s case (supra)*** is of no help to the petitioners at this stage. The judgments cited are not dealing with the waiver of pre-deposit and there cannot be quarrel on proposition that cheque cannot be of more than the due amount. The issue of difference of amount was decided by the trial Court, the finding would be tested in appeal.

[18] The contention is that petitioner-Simarpal Singh Wadhawan resigned prior to dishonour of cheque and was a sleeping partner. Suffice to say that from the finding of the judgment of conviction quoted above, it is forthcoming that he admitted his signatures on various documents including invoices and debit vouchers which stare at the face of contention raised. The contention raised on behalf of Sarabjeet Singh Wadhawan that he is neither a partner nor signatory to the cheque, does not enhance the case for waiver of pre-deposit. He stated that he was looking after the day-to-day affairs of firm. In cross-examination, he admitted his signatures on balance confirmation. The resignation of Simarpal Singh Wadhawan was found to be self-serving document. He deposed that after his resignation, Manjit Kaur and Sarabjeet Singh Wadhawan were partners whereas

earlier Manjit Kaur and Simarpal Singh Wadhawan were partners.

[19] The contention that conditions under Section 141 of the Act are not satisfied qua Simarpal Singh Wadhawan and Sarabjeet Singh Wadhawan was dealt with by the trial Court and would be subject matter of the appeal. It is not the stage to re-appreciate the evidence and to deal in detail with fulfilment of pre-requisites of Section 141 of the Act.

[20] The reliance on the decision in ***Monaben Ketanbhai Shah's case, S.M.S. Pharmaceuticals Ltd.' case, Ranrajsingh's case*** and ***A.K. Singhaniya 's case (supra)*** is of no avail.

[21] In ***Monaben Ketanbhai Shah's case (supra),*** there were no averments that the accused was incharge or responsible for conducting of business of firm whereas as in present case complainant led evidence to the said effect.

[22] ***S.M.S. Pharmaceuticals Ltd.' case, Ranrajsingh's case*** and ***A.K. Singhaniya 's case (supra)*** were the cases dealing with the liability of the Director of the company. It was held that mere holding designation is not enough. As per Section 141, the person should be incharge and responsible for conducting the business. In the present case, the trial Court has relied upon the evidence adduced which indicates participation of Simarpal Singh Wadhawan and Sarabjeet Singh Wadhawan in day-to-day working of the business.

[23] No case is made out for waiver of pre-deposit, criminal revision petitions are dismissed. However, time granted for making the

pre-deposit is extended by thirty days.

[24] Since the petitions are dismissed, the pending applications, if any, stand disposed of.

[25] It is clarified that observations made hereinabove are only for the purpose of deciding the issue of pre-deposit and shall not be construed as expression of opinion on the merits of the case.

[26] Photocopy of this order be placed on the files of connected cases.

[AVNEESH JHINGAN]
JUDGE

30th November, 2021
pankaj baweja

1. Whether speaking/ reasoned : Yes /No
2. Whether reportable : Yes /No