

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-M-48531 of 2021 (O&M)

Date of Decision: November 18, 2021

Keshav

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Bhawesh Chaudhary, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 482 Cr.P.C. seeking a direction to the lower Appellate Court to vacate the suspension of sentence of the accused person for non-compliance of order dated 18.10.2019 passed by Addl. Sessions Judge, Bhiwani in an appeal filed by convict-appellant Rahul.

It is argued that as per order dated 18.10.2019 passed by the lower Appellate Court, sentence of the convict-appellant Rahul was suspended for a period of three months subject to his depositing 20% of the compensation amount awarded by the trial court on or before 18.01.2020 as per the provisions of Section 148 of the Negotiable Instruments Act, with a further direction to furnish the bail bond in the sum of Rs.1,00,000/- with one surety in the like amount. It is contended that period of three months

elapsed on 18.01.2020. It is contended that on 18.01.2020 instead of depositing the 20% of the compensation amount, an application was moved by the convict-appellant seeking personal exemption on the ground of illness and also sought time to make the payment of compensation amount. The said application was allowed and the matter was adjourned for 29.01.2020. On the no objection endorsed by the counsel for the petitioner-complainant, the matter was once again adjourned on request for 25.03.2020 for appearance as well as payment. However, the matter was not taken up on the subsequent dates due to Covid-19 pandemic and was listed for hearing to 12.02.2021, on which date, the accused did not put in an appearance before the lower Appellate Court, which led to notices being issued to him for 16.07.2021. On the adjourned date, no one put in an appearance on behalf of the convict-appellant and the Addl. Sessions Judge, Bhiwani gave last opportunity for making the payment with a direction to the counsel for the appellant to produce the convict-appellant on the date so fixed. Counsel for the petitioner herein would contend that the matter now stands adjourned for 16.02.2022 by the lower Appellate Court. It is argued that the provisions of Section 148 of the Negotiable Instruments Act are to be complied with, failing which the convict-appellant would not be entitled to the benefit of having his sentence suspended. In this regard, counsel would place reliance upon judgment rendered by the Apex Court in the case of *Surinder Singh Deswal @ Col. S.S. Deswal and others vs. Virender Gandhi and another*, Criminal Appeal Nos.1936-1963 of 2019 decided on 08.01.2020 wherein, it has categorically been held that the word '*may*' used in the said Section is to be read as '*shall*' which would make it mandatory

for the drawer of the cheque to deposit minimum 20% of the amount of fine or compensation.

I have heard learned counsel for the petitioner and have also perused the pleadings of the case.

This court deems it appropriate not to issue notice of motion, however, proposes to dispose of this petition by giving a direction to the lower Appellate Court to adhere to the strict provisions of Section 148 of the Negotiable Instruments Act, which have been enacted by way of amendment to secure the interest of the person, to whom a cheque issued to discharge the liability stands dishonoured.

In the instant case, the convict-appellant had approached the lower Appellate Court seeking time to put in an appearance and make payment and despite time having been provided to the convict-appellant, he has not stepped forth and, therefore, in the opinion of this Court, the matter ought not to have been adjourned for such a long date. This matter is being disposed of with a direction that in case, the petitioner herein moves an appropriate application for either vacation of the suspension of sentence order dated 18.10.2019 or for preponing the matter already listed, the court seized of the appeal will decide the said application, keeping in view the provisions of Section 148 of the Negotiable Instruments Act.

November 18, 2021
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No