IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No.251 of 2022(O&M)
Date of Decision: April 21, 2022

N.Raju @ Raju Nanu ...Petitioner

Versus

M/s Apollo Tyres Ltd and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.G.Prakash, Advocate assisted by
Mr.P.S.Brar, Advocate for the petitioner.

Mr.Sanjay Verma, Advocate for the respondent.

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HARINDER SINGH SIDHU, J.

Challenge herein is to the order dated 20.12.2021 passed by Ld. Additional Sessions Judge, Gurugram in CRA-112-2017 arising out of Crl. Complaint No.76 of 2014. Vide the impugned order, the petitioner was directed to deposit 20% of the compensation awarded by the Trial Court.

Respondent No. 1- Company filed a complaint under Section 138/141/142 of the Negotiable Instruments Act, 1881 (for short 'the Act') against the petitioner on account of dis-honour of Cheque No.117775 dated 30.06.2013 for Rs.4.5 Crores issued by the petitioner in favour of the respondent. Vide judgment and order of sentence dated 13/14.02.2017 passed by the Judicial Magistrate Ist Class, Gurugram, the petitioner was convicted and sentenced to undergo simple imprisonment for a period of six months. The Ld. Magistrate further ordered the petitioner to pay an amount of Rs.5,00,00,000/- (Rupees Five Crore) to the complainant as compensation.

The petitioner filed appeal No.112 of 2017 before Ld. Additional Sessions Judge, Gurugram, wherein, vide order dated 15.03.2017 the operation of order of sentence was stayed during pendency of the appeal and the petitioner was granted bail. Notice was issued to the respondents for 25.05.2017.

Respondent No. 1- Company also assailed the order of the Ld. Judicial Magistrate Ist Class, Gurugram by filing Criminal Revision No.204 of 2017 seeking enhancement of sentence. The Criminal Appeal filed by the petitioner and Criminal Revision filed by the respondent were listed together on number of occasions, but could not be finally heard because of Covid-19 pandemic.

During pendency of the Appeal and Revision, the Act was amended and Section 148 was inserted in the Act with effect from 01.09.2018 which is 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:*
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> *Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.*
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> *(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:*
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> *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."*

On 14.01.2019 respondent No.1 filed an application under Section 148 of the Act (as amended) for directing the petitioner to deposit 20% of the compensation amount awarded by the Trial Court. Vide the impugned order dated 20.12.2021, the Ld. Additional Sessions Judge, Gurugram directed the petitioner to deposit 20% of the compensation amount of Rs.5 Crores on or before 24.01.2022. It was further directed that in case the amount is not deposited before the date fixed, the order of suspension of sentence shall automatically stand withdrawn and the petitioner would be required to surrender before the trial court.

Assailing the said order, the present petition was filed. The petition came up for preliminary hearing on 08.02.2022. One of the grounds urged by Ld. Senior Counsel for the petitioner was that the Ld. Appellate Court had only granted 34 days to the petitioner to deposit 20% of the compensation amount as against the statutory requirement of 60 days, which could be further extended by another 30 days.

During the pendency of this Petition, vide order dated 02.03.2022, the Ld. Additional Sessions Judge, Gurugram extended the period to deposit 20% amount upto 25.03.2022, failing which the petitioner was to face the consequences. Thus the aforesaid ground no longer survives.

Apart from that ground, Ld. counsel for the petitioner has raised submissions primarily on the merits of the matter. He has argued that the petitioner had served respondent No.1 – Company for 36 years. The cheque in question along with two other cheque for Rs.50 lacs and Rs.1.3 crores were forcibly taken from the petitioner by the officials of respondent No.1 Company under duress, coercion and threat to his life. He was also forced to sign on some blank papers. The petitioner and his wife were also coerced to execute three sale-deeds in favour of respondent No.1 company without any consideration. The petitioner and his wife have filed criminal complaints against the Managing Director and other officials of respondent No.1 Company. Civil Suits have been instituted to set aside the sale-deeds.

He further argued that the condition for deposit of 20% could not have been imposed because on 15.03.2017 when the order of suspension was initially passed, Section 148 of the Act was not on the Statute Book.

As far as the merits of the case are concerned, the same will be adjudicated by the Ld. Lower Appellate Court and this Court is not expressing any opinion thereon.

In ***Surinder Singh Deswal v. Virender Gandhi*****, (2019) 11 SCC 341**, Hon'ble Supreme Court has held that Section 148 of the NI Act as amended has retrospective application and shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the NI Act, even in a case where the criminal complaints for the offence under Section 138 of the NI Act were filed prior to Amendment Act 20 of 2018 i.e. prior to 1-9-2018.

> ***"6.1.*** *The short question which is posed for consideration before this Court is, whether the first appellate court is justified in directing the appellant-original accused who have been convicted for the offence under Section 138 of the NI 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 CrPC, considering Section 148 of the NI Act as amended?*
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> ***7.1.*** *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 NI Act was being frustrated, Parliament has thought it fit to amend Section 148 of the NI Act, by which the first appellate court, in an appeal challenging the order of conviction under Section 138 of the NI Act, is conferred with the power to direct the convicted appellant-accused 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 NI Act, it cannot be said that any vested right of appeal of the appellant-accused has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the NI 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 NI Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in Garikapati Veeraya [Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540] and Videocon International Ltd. [Videocon International Ltd. v. SEBI, (2015) 4 SCC 33] , 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 NI Act stated hereinabove, on purposive interpretation of Section 148 of the NI Act as amended, we are of the opinion that Section 148 of the NI 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 NI Act, even in a case where the criminal complaints for the offence under Section 138 of the NI Act were filed prior to Amendment Act 20 of 2018 i.e. prior to 1-9-2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the NI 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 NI Act, as amended."*

Accordingly, there is no merit in the petition.

Mr. Parkash, Ld. counsel for the petitioner has requested that some reasonable time be granted to the petitioner to make the deposit as directed by the impugned order.

This appears to be a fair request considering that he had assailed the order in revision. Accordingly, the time to deposit the amount is extended till 18.05.2022.

Petition stands disposed of accordingly.

April 21, 2022 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No