

201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4476-2019 (O&M)
Date of decision:10.08.2022

Vijay Kumar

...Petitioner

Versus

M/s Aggarwal Finance Co.

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Manoj Pundir, Advocate for the petitioner.

Mr. Namit Khurana, Advocate for the respondent.

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ANOOP CHITKARA, J.

Criminal Complaint	Criminal complaint No.69 of 2016 CNR No.HRYN03-000-155-2016 Date of decision: 08.01.2018
Criminal Appeal	CRA-41-2018 Date of institution:08.02.2018

Aggrieved by the imposition of a condition of payment of 20 % of the compensation, while suspending the sentence in an appeal against the conviction, the convict has come up before this Court against the condition.

2. Vide impugned judgment dated 08.01.2018, the petitioner was convicted for commission of offence under Section 138 of Negotiable Instruments Act, 1881 (for short N.I. Act). Feeling aggrieved, he had challenged the same before the Sessions Court. Vide order dated 02.01.2018, learned Additional Sessions Judge, directed the appellant in the aforesaid terms.

3. Section 148 of the N.I. Act was amended and w.e.f. 01.09.2018 Section 148 was inserted. As per Section 148 of N.I. Act, it is within the powers of the appellate Court to order payment pending appeal against conviction. As per Section 148(1), the Appellate Court can do the same on its own without there being any application filed by the complainant.

4. In Surinder Singh Deswal v. Virender Gandhi, 2019 LawSuit(SC) 1245, Hon'ble Supreme Court holds,

[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.

5. Given above, there is no merit in the petition. However, the interest of justice would suffice if the appeal pending before the appellate Court is taken on the priority. This Court requests the learned Appellate Court to decide these appeals on top priority preferably on or before Oct 31, 2022.

6. It is clarified that the Appellate Court shall decide the appeal notwithstanding the non-deposit of the instruments described above, and no coercive steps are taken against the convict until the time mentioned above period. The convict/appellant is directed not to seek any adjournment; however, if the appellant seeks any adjournment, then this order shall be recalled automatically under section 362 read with 482 CrPC, without any further reference to this court. If the counsel for the appellant is absent or seeks adjournment, then it shall also be open for the Appellate Court to appoint a legal aid counsel for the convict and to hear the appeal on merits. The complainant is requested not to seek any adjournment. Parties to inform the concerned court. In case, the complainant remains absent, the trial Court shall proceed by appointing a legal aid counsel.

The petition is disposed of with the aforesaid observations. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

10.08.2022
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Whether speaking/reasoned: Yes
Whether reportable: No.