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

Sr. No.276 CRM-M-36343-2021
Date of decision : 19.12.2022

Balvir Singh

.....Petitioner(s)

Versus

State of Punjab and another

..... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr.Pawan Attri, Advocate for the petitioner(s)

Mr.Kamalpreet Bawa, AAG, Punjab

Mr.PS Bhinder, Advocate for respondent No.2.

**AMAN CHAUDHARY, J.**

The present petition under Section 482 Cr.P.C. has been filed for setting aside the order dated 20.02.2020, Annexure P-3, passed by learned Additional Sessions Judge, Patiala, vide which the petitioner has been directed to deposit 1/3$^{rd}$ amount of the compensation imposed by the trial Court.

Briefly put the facts of the case are that in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') by respondent No.2 on account of dishonour of the cheque bearing No.025042 dated 18.11.2014, learned Judicial Magistrate, 1$^{st}$ Class, Patiala vide order dated 27.01.2020, has convicted and sentenced the petitioner to undergo rigorous imprisonment for one 1 year and to pay a fine of Rs.10

lakh. Against which, the petitioner filed an appeal,alongwith the application for suspension of his sentence. The said application has been allowed vide order dated 20.02.2020 by learned Additional Sessions Judge, and the sentence of the petitioner has been suspended, subject to furnishing bail bond in the sum of Rs.50,000/- with one surety as well as to deposit 1/3rd amount of compensation within a period of 60 days.

Learned counsel for the petitioner, at this stage, submits that the petitioner is a poor person and due to lockdown, he is not in a position to deposit the aforesaid 1/3rd of the compensation amount. Even otherwise Section 148(1) of the Act prescribes but 20% as minimum amount, which he is ready to deposit. Thus, he prays for the modification of the order dated 20.02.2020 to the aforesaid extent.

On the other hand, learned counsel for the respondent State as also the complainant-respondent submit that the impugned order has rightly been passed by the appellate Court and pray for the dismissal of the present petition.

Heard.

For the adjudication of the present issue, it would be apposite to refer to Section 148 of the Act, which reads thus:-

> "**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."

Hon'ble The Supreme Court in India in the case **Surinder Singh Deswal vs. Virender Gandhi** reported in (2019) 11 SCC 341, while dealing with the interpretation of the word 'may' in section 148(1) of the Act has held thus:

"**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 ap–plication filed by the Appellant-Accused Under Section 389 of the Code of Criminal Procedure 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 re–sources 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 Section 138 of the N.I. Act."

Indeed in view of the provision and the interpretation thereto, it is mandated that the minimum deposit is 20%. The direction in the present case by the Appelate Court is to deposit ⅓ of the amount of cheque, for which, neither has any reason been assigned nor the basis of determination thereof has come forth. On the other hand the petitioner is stated to have suffered a severe financial crunch as an aftermath of Covid-19 Pandemic, thus is stated to be not in a position to deposit $1/3^{rd}$ of the total amount involved i.e. Rs.10 lakh. However, he is ready and willing to forthwith make a deposit of the minimum amount as per the provision aforesaid, which was also his statement as recorded at the outset in the order dated 16.09.2021, at the time of issuing notice in the instant case. Therefore, keeping in view the peculiar facts and circumstances of the case, this Court finds that ends of justice would be sufficiently met by directing deposit of the minimum amount as per the provision aforesaid.

As a result thereof,the present petition is partly allowed by modifying the impugned order dated 20.02.2020, to the extent of directing the petitioner todeposit 20% of the total compensation, within the period prescribed.

Disposed of.

19.12.2022 **(AMAN CHAUDHARY)**
gsv **JUDGE**

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