IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-11730-2022(O&M)
Date of decision: 01.04.2022

RANDHIR SINGH

....Petitioner

Versus

AMAR SINGH AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present : Mr. Dalel Singh Nain, Advocate
for the petitioner.

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<u>VINOD S. BHARDWAJ. J. (ORAL)</u>

Present petition has been filed under Section 482 CrPC for setting aside the order dated 23.08.2021, whereby the lower Appellate Court had directed the petitioner to make a deposit of 20% of the compensation awarded by the Trial Court on 06.10.2021 in appeal bearing No. CRA-296 of 2018 dated 26.10.2018/ 21.01.2020 titled as 'Randhir Singh Versus Amar Singh etc'.

2. Facts of the case in brief would show that respondent No.1/complainant had filed a criminal complaint NACT 241/2016 against the petitioner under Section 138/142 of the Negotiable Instruments Act on 4th April, 2016 alleging therein that the petitioner was having friendly relations with him due to which a friendly loan to the tune of Rs.2,50,000/- was advanced in January 2015. Cheque bearing No.000002 dated 22nd January, 2016, for a sum of Rs.2,50,000/- was issued by the petitioner in discharge of the liability from his account in the HDFC Bank, Tuhana. Upon presentation of the said cheque, the same was returned dishonored with the bank return memo bearing the remark "funds insufficient" dated 26th February, 2016. A legal notice dated 11th March, 2016 was served upon the petitioner, however, on account of non-payment

despite receipt of the legal notice, the complaint in question was instituted.

3. The parties led their respective evidence and upon consideration thereof the Judicial Magistrate First Class, Kaithal passed a judgment of conviction dated 28th September 2018 and sentenced the petitioner to undergo simple imprisonment for a period of 08 months for commission of offence punishable under Section 138 of the Negotiable Instruments Act and further directed payment of compensation to the tune of Rs.2,50,000/- in terms of Section 357(3) CrPC to respondent No.1/complainant within a period of two months from the date of the judgment.

4. Aggrieved thereof, the said judgment of conviction and order of sentence, the petitioner preferred an appeal before the lower Appellate Court. During the pendency of the said appeal, an application under Section 148 of the Negotiable Instruments Act was filed by the respondent-complainant claiming that the petitioner (appellant therein) be directed to pay interim compensation. While considering the same, the lower Appellate Court directed the petitioner to deposit 20% of the amount of the cheque towards compensation as per Section 148 of the Negotiable Instruments Act, 1881. Hence, the present petition.

5. Learned counsel for the petitioner has vehemently argued that directions to deposit 20% as compensation, amounts to retrospective application of the statutory mandate. He contends that the petitioner should not be called upon to deposit the said amount as Section 143(A) of the Negotiable Instruments Act was incorporated in the statute after the petitioner had already preferred an appeal against the judgment of conviction.

6. The said argument of the petitioner is noticed to be rejected inasmuch as the application for compensation has been filed under Section 148 of the Negotiable Instrument Act, which is a separate and distinct provision, empowering

the lower Appellate Court to direct a convict to deposit interim compensation. The said provision is distinct from the provision incorporated under Section 143(A) of the Negotiable Instruments Act, which is a provision relating to mandatory pre-deposit before an appeal can be entertained and be heard on merits. The scope of both the provisions is distinct and independent of each other. Besides, the consequence and manner of enforcement of the said provisions is also separate. While failure to make a pre-deposit necessarily results in non-consideration of the appeal on merits and rendering it liable to be dismissed, the non-payment of the interim compensation, so assessed by the Court, would have a separate procedure for seeking execution of the said order. The Hon'ble Supreme Court has also examined the said aspect in the judgment passed in Criminal Appeal Nos.1936-1963 of 2019 titled as ***Surinder Singh Deswal @ Col. S.S. Deswal & Ors Vs. Virender Gandhi & Anr***. The relevant extract of the said judgment is reproduced herein below after:-

> *14. Learned counsel for the appellant has placed reliance on the judgment of this Court dated 30.07.2019 in Criminal Appeal No.1160 of 2019 (G.J. Raja vs. Tejraj Surana). This Court in the above case was considering provisions of Section 143A of the N.I. Act which was inserted by the same Amendment Act 20 of 2018 by which Section 148 of the N.I. Act has been inserted. This Court took the view that Section 143A is prospective in nature and confined to cases where offences were committed after the introduction of Section 143A i.e. after 01.09.2018. In paragraph 22 of the judgment following has been held:*
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> > *"22. In our view, the applicability of Section 143A of the Act must, therefore, be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143A, in*

> *order to force an accused to pay such interim compensation."*

15. The judgment of this Court which was delivered in the case of the present appellants i.e. Criminal Appeal Nos.917-944 of 2019 (Surinder Singh Deswal @ Col. S.S. Deswal and others vs. Virender Gandhi) (in which one of us M.R.Shah, J was also a member) was also cited before the Bench deciding the case of G.J. Raja. This Court in its judgment dated 29.05.2019 has rejected the submission of the appellants that Section 148 of N.I. Act shall not be made applicable retrospectively. This Court held that considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, on purposive interpretation of Section 148 of the N.I. 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 N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No.20/2018 i.e. prior to 01.09.2018.

16. The Bench deciding G.J. Raja's case has noticed the judgment of this Court in the appellants' case i.e. Surinder Singh Deswal's case and has opined that the decision of this Court in Surinder Singh Deswal's case was on Section 148 of the N.I. Act which is a stage after conviction of the accused and distinguishable from the stage in which the interim compensation was awarded under Section 143A of the N.I.Act. When the Bench deciding G.J. Raja's case(supra) itself has considered and distinguished the judgment of this Court in appellants' own case i.e. Surinder Singh Deswal's, reliance by the learned counsel for the appellants on the judgment of this Court in G.J. Raja's case is misplaced. It is useful to refer to paragraph 23 of the judgment in G.J. Raja's case which is to the following effect:

> *"23. We must, however, advert to a decision of this*

> *Court in Surinder Singh Deswal and Ors. v. Virender Gandhi (2019) 8 SCALE 445 where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 01.09.2018 was held by this Court to be retrospective in operation. As against Section 143A of the Act which applies at the trial stage that is even before the pronouncement of guilt or order of conviction, Section 148 of the Act applies at the appellate stage where the Accused is already found guilty of the offence Under Section 138 of the Act. It may be stated that there is no provision in Section 148 of the Act which is similar to Sub-Section (5) of Section 143A of the Act. However, as a matter of fact, no such provision akin to Sub-section (5) of Section 143A was required as Sections 421 and 357 of the Code, which apply post-conviction, are adequate to take care of such requirements. In that sense said Section 148 depends upon the existing machinery and principles already in existence and does not create any fresh disability of the nature similar to that created by Section 143A of the Act.*

Therefore, the decision of this Court in Surinder Singh Deswal (2007) 13 SCC 492 stands on a different footing." In view of the above, the judgment of this Court in the case of G.J. Raja does not help the appellants.

7. Learned counsel for the petitioner could not dispute the applicability of the aforesaid authoritative pronouncement. He has also failed to refer to any circumstances under which the directions to deposit 20% of the amount as interim compensation is illegal, onerous, harsh, disproportionate or can be said to be an abuse of the power so conferred upon the said Court. Learned counsel has not

pointed out any circumstances on the basis whereof the determination of 20% of the amount as interim compensation should be held as bad, excessive and in violation of the statute.

Hence, the petition is dismissed as devoid of any merit.

(VINOD S. BHARDWAJ)
JUDGE

April 01, 2022
S.Sharma(syr)

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