

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

Sr. No.

CRM-M-16675-2017 (O&M)

Date of decision : 20.12.2022

Amarjit Singh

.....Petitioner(s)

Versus

Manjit Singh

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Vaibhav Sehgal, Advocate for the petitioner(s)

None for the respondent

AMAN CHAUDHARY, J.

Present petition under Section 482 Cr.P.C. has been filed for quashing of impugned order dated 24.04.2017 passed by learned Additional Sessions Judge, Kapurthal, Annexure P-1, whereby the petitioner has been directed to deposit 1/3rd of compensation amount as pre-condition for grant of suspension of sentence.

Learned counsel for the petitioner submits that the direction to deposit 1/3rd of the compensation amount as a pre-requisite for suspension of sentence to the petitioner is wholly without jurisdiction as Section 389 Cr.PC provides for no power or discretion for passing such a conditional order, as the effect of it is nullifying the right of first appeal of the petitioner,

whereby the judgment passed by the trial Court in the complaint under Section 138 of NI Act convicting and sentencing him to undergo RI for one year with compensation to the tune of Rs.3,99,000/- has been challenged and is pending adjudication. He places reliance on the judgment of Hon'ble The Supreme Court of India in the case of **Dilip S.Dhanukar vs. Kotak Mahindra Co. Ltd.** (2007) 6 SCC 528.

Despite service none has appeared on behalf of the complainant-respondent.

Heard.

It is apposite to make a reference to the judgment of Hon'ble The Supreme Court of India in its judgment in the case of **Surender Deswal @ Col. SS Deswal vs. Virender Gandhi**, 2019(3) RCR (Cr) 186, has made it clear that relief under Section 148 of NI Act would be available to the complainant even in cases where the complaint case has been filed prior to the amendment and that while considering a number of judgment including in case of **Dilip S.Dhanukar** (supra), has in no uncertain terms held that by way of the amended provision, no substantive right of appeal has been taken away and/or affected. It has been elucidatedly held thus:

“....Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that 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. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated.

.....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 application filed by the Appellant Accused under Section 389 of the Cr.P.C. to suspend the sentence.....

.....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 resources 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 Sec 138 of the N.I. Act.

.....The opening word of amended Section 148 of the N.I. Act is that “notwithstanding anything contained in the Code of Criminal Procedure.....”. Therefore irrespective of the provisions of Section 357(2) of the Cr.P.C., pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court.....”

Apropos the language used in Section 148 of the Act, Hon'ble the Supreme Court, has interpreted the word 'may' used in the aforesaid provision to be construed as a rule or shall keeping in view the statement of objects and reasons of amending the said section. Para relevant in this regard reads 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 application filed by the Appellant Accused under Section 389 of the Cr.P.C. 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.”

Delhi High Court in the case of **M/s Takshila Retail Pvt. Ltd.**

vs. State and another CRL.M.C.702/2022 & CRL.M.A.2998/2022 decided on 13.05.2022, in somewhat similar facts as in the present case, held thus:-

30. The question before this Court, however, stands on a different footing. In the instant case, the complaint case as well as the appeal had been filed before the amendment. Moreover, the suspension of substantive sentence was also granted to the accused/petitioners prior to the amendment. From filing of the complaint case to filing of appeal and suspension of sentence, all proceedings pertain to a time when Section 148 of the NI Act was not even in existence. The analysis of the abovementioned judgments of Hon'ble Supreme Court is silent with respect to question that is before this Court since the facts of the said cases are different to the instant matter. The observations of the Hon'ble Supreme Court do not indicate the position of law with regard to the applicability of Section 148 of the NI Act on cases such as the instant matter and therefore, an observation is to be made, keeping in view the opinion of the Hon'ble Supreme Court.

33. Keeping in view the objective of the amendment, it is proper to say that to avoid frivolous, unnecessary and unscrupulous litigations and proceedings, the Court concerned may take the required steps to ensure that the appellant has approached the Court with a genuine and real case against the order of conviction and is not wasting the time and resources of the judicial machinery only to delay his conviction and punishment thereof. Such a check on filing of appeals cannot be said to be limited to the cases arising only after the amendment. If it is the intention of the legislature to provide for an effective measure to deal with the menace of unnecessary litigations, then such measure may be intended to be applied to cases where the proceedings under appeal are still underway and have been pending for years. In fact, the need to filter out the cases of genuine or frivolous appeals is all the more substantial in cases that have been pending for a long time and wherein no progress is being made for such prolonged periods of time due to the pendency of the appeal proceedings. The Hon'ble Supreme Court has held the provision in question, that is, Section 148 of the NI Act, to be retrospective in nature and having applicability over complaints that have been filed prior to the amendment. This reflects the intention of the Hon'ble Apex Court to not extinguish the relief as intended to be granted to the complainant under Section 148. The interpretation may be construed to mean that any appeal which is emanating from a complaint filed prior to the amendment will fall within the ambit of the nature of cases as described by the Hon'ble Supreme Court and Section 148 would apply to such cases. The idea is also to give purposive interpretation to Section 148 to extend applicability to cases which were filed when the remedy was not available to the complainant under Section 148 of the NI Act. The extensive interpretation would only serve the objective intended by the legislature.

35. In case of Section 148 of the NI Act, there is no substantive right that is being taken away by the enforcement of the amendment. The Hon'ble Supreme Court in *Surinder Singh Deswal* (2019) has also rejected the argument that the amendment takes away the vested right of the convict to appeal. The only implication of the amendment is

that some part of the amount of fine/compensation, which is accruing towards the complainant, is directed to be paid against the convict/appellant and in favour of the complainant. This is also done bearing in mind that appellant has been convicted under Section 138 of the NI Act and his guilt under the offence has already been established after thorough procedure and appreciation of evidence. In light of these facts, if a nominal fine is imposed upon the appellant, it cannot be seen to be an unfair and unreasonable penalization or taking away of substantive right of the convict/appellant. Therefore, the argument that Section 148 is not retrospective is rejected. The order passed by the learned ASJ could not have been said to be in excess of power, to the extent of imposition of the fine of 20% of the amount.

43. In view of the discussion above, and also since, it has been established that the applicability of Section 148 of the NI Act will be extended to appeals arising out of complaint cases that have been filed prior to the amendment, it is found that the learned ASJ was not wrong in adjudicating upon an application under section 148 of the NI Act, at the given stage, and imposing the cost/fine/compensation of 20% of the amount imposed by the learned Trial Court. Hence, to the point of retrospectivity, this Court is satisfied that the contentions and grounds raised on behalf of the petitioners do not stand ground in the peculiar facts and circumstances of this case.”

The ratio of the aforesaid judgment in the case of **M/s Takshila Retail Pvt. Ltd.** (supra) applies to the present case, inasmuch as, in the said case as well, from the filing of the complaint, appeal and suspension of sentence, all proceedings pertained to a period of time when Section 148 of NI Act was not even in existence. In the aforesaid case, the learned Additional Sessions Judge had initially passed an order dated 05.04.2018, suspending the order of sentence as passed by the trial Court. However, on an application filed by respondent No.2, under Section 148 of NI Act, the learned Additional Sessions Judge vide order dated 05.02.2022, directed the

accused-appellant to deposit 20% of the fine/compensation with a condition that in case of failure to do so, the suspension of sentence granted vide order dated 05.04.2018 would stand vacated.

Now adverting to the present case, the learned Additional Sessions Judge, vide order dated 24.04.2017, while suspending the sentence of the petitioner, had imposed the condition of depositing of 1/3rd of compensation amount, though, a period of 15 days has been granted for depositing the said amount. Operative part of the order reads thus:-

“I have perused the file. Perusal of the file shows that vide judgment and order dated 24.03.2017, appellant/applicant has been convicted for the offence under section 138 of Negotiable Instruments Act and has been sentenced to undergo R.I. for a period of one year by the Ld. lower Court. Appellant/applicant has been further directed to pay compensation to the tune of Rs.3,99,000/- to the complainant. Further perusal of the file shows that during the trial of the case, appellant/applicant was on bail. Above said sentence of imprisonment awarded to the appellant/applicant is very much less than three years as stated above. As per the contentions of the Ld. Counsel for the appellant/applicant, arguable points are involved in the appeal. Disposal of the appeal may take time. So, in view of all the above said circumstances, in the interest of justice, the application filed by the appellant/applicant under section 389 Cr.P.C. is accepted and during the pendency of the present appeal, sentence awarded to the applicant appellant, as stated above, is suspended and applicant-appellant is ordered to be released on bail on executing bail bond for a sum of Rs.60,000/- with one surety of like amount, to the satisfaction of Ld. lower Court/Duty Magistrate, further applicant/appellant will have to deposit 1/3rd of the above said compensation amount before the Ld. lower Court and subject to depositing of said 1/3rd compensation amount, bail bond and surety bond will be accepted by the Ld. lower Court. Appellant-applicant is granted time of 15 days from today for depositing above said compensation amount to the tune of 1/3rd and furnishing bail bond and surety bond, as ordered above. In this way, the above said application stands disposed off.”

In the case of **M/s Takshila Retail Pvt. Ltd.** (supra), it was observed that in the case of **Surinder Singh Deswal** (supra), the amendment does not take away the vested right of the convict to appeal. As the appellant stands convicted under Section 138 of the NI Act, the offence having already established after appreciation of evidence and procedure followed, if a nominal fine is imposed upon the appellant, the same cannot be seen to be an unfair and unreasonable penalization or taking away of substantive right of the convict/appellant. Section 148 was thus held to apply retrospectively.

In the case of **Surender Deswal** (supra), it was unequivocally held by Hon'ble The Supreme Court of India, that on considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, on purposive interpretation thereof, Section 148 of the N.I. Act as amended, shall be applicable even in respect to 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 and if such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. The amended provision confers the 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 application filed by the Appellant Accused under Section 389 of the Cr.P.C. to suspend the sentence. Considering the aforesaid exposition of law, the order passed by the Appellate Court in the present case, for the

reasons stated therein, directing to deposit 1/3rd of the compensation amount is found to be legally tenable. However, a period of 60 days, which may be extended for a further period not exceeding 30 days, for sufficient cause shown by the appellant, as per Section 148 of NI Act, to deposit the same has to be granted, as such, to that extent the order impugned is modified.

The present petition is disposed of accordingly.

20.12.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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