

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

CRM-M-13561-2022

Date of Decision: 31.03.2022

Surender Kumar Aggarwal

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Aditya Sanghi, Advocate,
for the petitioner.

SANT PARKASH, J.

The petitioner lays challenge to order dated 07.03.2022 (P-1) passed by the learned Additional Sessions Judge, Bhiwani in Criminal Appeal No. CRA/100/2020, vide which concession of bail granted to the petitioner had been withdrawn and non-bailable warrants were issued. Further challenge is to order dated 06.01.2022 (P-2) whereby the petitioner was directed to deposit 20% of the amount of compensation awarded by the learned trial court in favour of the complainant.

Respondent No.2 filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') on the averments that there was friendly relationship between the complainant and the petitioner who is the sole Proprietor of M/s Radha Swami Industries & Bankey Bihari Industries, Uttam Nagar, Loharu Road, Bhiwani. On 03.08.2014, the complainant advanced a friendly loan of Rs.10,00,000/- on interest @2% per month. In discharge of his liability, the petitioner issued a cheque dated 20.09.2014 for an amount of Rs.10,00,000/-, which on presentation was dishonoured with remarks "account closed". Thereafter, a

legal notice dated 15.11.2014 was served by the complainant on the accused

asking him to make payment of cheque amount within 15 days from the receipt of the same but neither he gave any reply to the legal notice nor did he pay the cheque amount to the complainant-Bank. The complainant alleged that accused/petitioner knowingly and willingly did not honour the said cheque with malafide intention and in this way he committed an offence under Section 138 of the N.I. Act.

On trial, the petitioner was convicted and sentenced under Section 138 of the N.I. Act vide judgment of conviction dated 04.02.2020 and order of sentence dated 05.02.2020 whereby he was sentenced to undergo simple imprisonment for one year and to pay Rs. 15 lac as compensation in terms of Section 357(3) Cr.P.C. to be paid to the complainant, in default of which to further undergo simple imprisonment for six months.

Aggrieved by the aforesaid order, petitioner preferred an appeal and sentence of the petitioner was suspended vide orders dated 02.03.2020. Later, the complainant had filed an application for issuance of directions to the petitioner/accused to make the payment of 20% of the compensation to the complainant as per the provisions of Section 148 of the N.I. Act. The said application was accepted by the learned appellate court vide order dated 06.01.2022 and the petitioner was directed to pay 20% of the compensation amount to the complainant within 60 days. When the case was taken up on 07.03.2022, petitioner chose not to appear and resultantly, following order was passed by the learned appellate court:-

Today the case was fixed for arguments as well as for payment of 20% amount of compensation.

None has appeared on behalf of appellant when the case was called several times. It is already 3.00 pm. Waited sufficiently, further wait is not justified. Therefore, concession of bail granted to the appellant is hereby withdrawn and his

bail bonds are forfeited to the State. Let non-bailable warrants against appellant-accused be issued for 18.04.2022. Notices to his surety be also issued for the date fixed.”

Aggrieved against the above-said orders dated 06.01.2022 (P-2) and 07.03.2022 (P-1), the petitioner has approached this Court.

Learned counsel for the petitioner submits that non-appearance of the petitioner was neither intentional nor deliberate. He further submits that the learned appellate court did not appreciate the arguments addressed on behalf of the petitioner and without considering that the power granted under Section 148 of the NI Act is discretionary and should be exercised sparingly, wrongly passed the impugned order under Section 148 of the NI Act. He next submits that the impugned order dated 06.01.2022, directing the petitioner to deposit 20% of the compensation amount before the trial court within 60 days of order suffers from material illegality as the same was passed in a mechanical manner without giving any reasoning or justification. In support of his submissions, learned counsel has placed reliance on a judgment of Madras High Court in **L.G.R. Enterprises and others vs P.Anbazhagan and others, 2019(3) MLK (Criminal) 423** and judgment dated 10.12.2021 rendered by this Court in **Dharampal and another v Om Parkash, (CRM-M-49965-2021)** whereby the interim compensation awarded under section 143A of the N.I. by the trial court was set aside.

This Court has heard the learned counsel for the petitioner and perused the case file.

The questions arising for consideration before this Court are, whether the first appellate court was justified in directing the petitioner to deposit 20% of the amount of compensation pending appeal challenging the order of conviction and order of sentence?; and whether the appellate court

has wrongly dismissed the concession of bail granted to the petitioner?

Before proceeding further, it would be apt and appropriate to refer to Section 148 of the N.I. Act, inserted vide Negotiable Instruments Amendment Act, 2018 (20 of 2018) w.e.f. 01.09.2018, and reads as under:-

“148. Power to Appellate Court to order payment pending appeal against conviction.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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.”

A bare perusal of the aforesaid provision would makes it crystal clear that by virtue of Negotiable Instruments Amendment Act, 2018 (20 of 2018), the lower appellate court, in an appeal challenging the order of conviction under Section 138 of the NI Act, was conferred with the power to direct the convict/appellant to deposit such sum which shall be a minimum of 20% of the fine/compensation awarded by the trial court in order to avoid delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. Due to delay tactics by

the unscrupulous drawers of the dishonoured cheque(s), an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings. In case the amended Section 148 of the N.I. Act, is read as a whole, it can be construed that though the word used in the said Section is “may”, which is generally to be construed as a “rule” or “shall” and special reasons are to be assigned by the appellate court in not directing to deposit 20% of the compensation amount which is an exception to the said rule.

The question in respect of Section 148 of the NI Act i.e. imposition of minimum of 20% of the compensation, has been elaborately discussed by the Supreme Court in case **Surinder Singh Deswal @ Col. S.S. Deswal & ors Vs Virender Gandhi and another, (Crl. Appeal Nos.1936-1963-2019), decided on 08.01.2020**. The relevant portion of the judgment in this regard is reproduced hereinbelow:-

“8. 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 N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction Under Section 138 of the N.I. Act, is conferred with the power to direct the convicted Accused - Appellant 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 N.I. Act, it cannot be said that any vested right of appeal of the Accused - Appellant has been taken away and/or affected. Therefore, submission on behalf of the Appellants that amendment in Section 148 of the N.I. 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 N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), 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 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, 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 N.I. Act, as amended.

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 Code of Criminal Procedure, 1973 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 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 section 138 of the N.I. Act."

A perusal of aforesaid makes it abundantly evident that directing the petitioner to deposit 20% of the amount of compensation awarded by the trial court in favour of the complainant cannot be faulted with and is absolutely in consonance with the settled proposition of law and it is held that the lower appellate court vide order dated 06.01.2022 rightly directed the petitioner to deposit 20% of the amount of compensation awarded by the learned trial court in favour of respondent No.2-complainant within a period of 60 days.

As regards withdrawal of concession of bail, when the case was taken up on 07.03.2022, there was no representation on behalf of the petitioner-accused despite the case having been called several times. The order of the appellate court declaring that due to non-compliance of condition of deposit of 20% of the amount of compensation as also non-appearance of the petitioner-accused, withdrawal of order suspending his sentence is well within the jurisdiction of the appellate court and no error has been committed by the appellate court Bhiwani in passing the order dated 07.03.2022 and the same deserve to be upheld. In this regard also, reference can be made to Para 18 & 19 of the judgment delivered by the Supreme Court in the case of **Surinder Singh Deswal (supra)**, which read as under:-

"18..... When suspension of sentence by the trial court is granted on a condition, noncompliance of the condition

has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.

19. It is for the Appellate Court who has granted suspension of sentence to take call on noncompliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.”

So far as the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner in the case of **L.G.R. Enterprises (supra)** and **Dharampal (supra)** is concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, the same have not been found to be of any help to the petitioner, being clearly distinguishable on facts.

In the case of **L.G.R Enterprises (supra)**, the scope and purport of section 143A of the Negotiable Instruments Act was dealt with and the Hon'ble Madras High Court held that the trial court did not exercise the discretion properly as it did not give any reasons as to why such a discretion is being given against the accused persons. In the case of **Dharampal (supra)**, interim compensation awarded under section 143A of The Negotiable Instrument Act, 1881 by The Learned Trial Magistrate was set aside. To the contrary, while relying on **Surinder Singh Deswal @ Col. S.S. Deswal's case (supra)**, this Court is of the view that considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act and on its purposive interpretation, it 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. Accordingly, it is held that non-appearance and non-compliance of the condition to deposit of 20% of the amount in favour of the complainant was sufficient to withdraw the bail granted. Consequently, order dated 07.03.2022 also, cannot be held to be erroneous and is upheld.

Apart from the above, even this Court, during the course of arguments, made an offer to the counsel for the petitioner as to whether he is still willing and ready to deposit the amount as per directions of the first appellate court, to which he specifically denied. It shows that the intention of the petitioner is not bonafide, rather a deliberate act to supersede the direction of courts below by getting an order contrary to the settled canons of law, that too, when this Court does not find any perversity or illegality in the impugned orders which are absolutely in consonance with the legal proposition.

Considering the peculiar facts and circumstances of the case coupled with the reasons aforementioned, the instant petition is bereft of merit and without any substance. Accordingly, the same is hereby dismissed.

31.03.2022
mks/avin

(SANT PARKASH)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO