IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

110+279

CRM-M-15043-2020 (O&M)
Date of Decision: November 16, 2022

RAJESH SAROHA

…Petitioner

Versus

STATE OF HARYANA AND ORS

…Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Vishal Nehra, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

Mr. Dhruv Gupta, Advocate (Legal-aid-Counsel)
for respondents No.1 and 2.

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed for setting aside the order dated 17.08.2019 whereby the applicant-appellant was directed to deposit 20% of the compensation amount within 60 days in view of Section 148 of the Negotiable Instruments (Amendment) Act, 2018 passed by the Appellate Court in CRA/241/2019 titled as Rajesh Saroha Vs. Sunil Devi and order dated 17.08.2019 (Annexure P-2-colly) passed by Appellate Court in CRA/243/2019.

This Court vide order dated 26.06.2020 granted interim bail to the petitioner on account of a submission having been made that he is poor person and he be granted interim bail to enable him to arrange the money.

Till today 20% compensation amount as directed to paid vide impugned order dated 17.08.2019 passed by the Appellate Court has not been paid despite the indulgence shown by this Court. It may also be noticed that the petitioner is a Director of the company.

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 of India in the case of '**Surender Singh Deswal @ Colonel & others Vs. Virender Gandhi and another'** reported as (2019) 11 SCC 341 dealt with appeals preferred on behalf of the accused, who had been convicted by the trial Court under Section 138 of the Act, feeling aggrieved and dissatisfied with the order of the High Court wherein their revision petitions were dismissed upholding the order passed by first appellate court directing them to deposit 25% of amount of compensation in view of the amended provision. The facts as noticed in the said judgment were that the ground raised to challenge the direction to deposit a part the compensation was that the criminal complaints were filed before the amendment Act No.20/2018 by which Section 148 of the Act came in to effect, as such said amendment would not be applicable. The Hon'ble Court observed in para 8 of the judgment that at the time when the appeals against the conviction were preferred the amending Section had come into force w.e.f. 1.9.2018. The relevant para 8 reads thus:-

> *"8. Shri Balbir Singh, learned senior counsel appearing for the appellants questioning the order of the Additional Sessions Judge dated 20.07.2019 and judgment of the High Court submits that by mere non- deposit of 25% of the amount of compensation as directed on 01.12.2018 cannot result in vacation of suspension of sentence. Learned counsel submits that the direction to deposit 25% of the compensation as directed by the trial court could not have been made under Section 148 of the NI Act. Section 148 of the NI Act having come into force on 01.09.2018 could not have been relied by the Courts below. Since, the complaint was filed in the year 2015 alleging offence under Section 138 of the NI Act which*

was much before the enforcement of Section 148 of the NI Act. He further submits that non-deposit of 25% of the amount of compensation could not lead to vacation of the order suspending the sentence rather it was open to the respondents to recover the said amount as per the procedures prescribed under Section 421 Cr. P.C."

In the said judgment, the statement of objects and reasons of the amendment in Section 148 of the Act were referred. The para relevant in this regard reads thus:-

> *"7.1 The short question which is posed for consideration before this Court is, whether the first appellate court is justified in directing the appellants – original accused who have been convicted for the offence under Section 138 of the N.I. Act to deposit 25% of the amount of compensation/fine imposed by the learned trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under Section 389 of the Cr.P.C., considering Section 148 of the N.I. Act as amended?*
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> *7.2 While considering the aforesaid issue/question, the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, as amended by way of Amendment Act No. 20/2018 and Section 148 of the N.I. Act as amended, are required to be referred to and considered, which read as under:*
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> *"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public*

> *including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.*
>
> *2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy."*

Hon'ble The Supreme Court of India in the case of **Surender Singh Deswal** (supra), while considering a number of judgments including the one relied upon by the petitioner herein, in case of **Dalip S. Dahanukar** (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 was further elucidatedly held that amended Section 148 of the Act is to be purposively interpreted in such a manner that it would serve the Objects and Reasons of not only amendment in Section 148 of the Act, but also Section 138 of the Act and that the amended provision would apply to all appeals filed even prior 1.9.2018. A further interpretation to the language of the provision considering the amended Section 148 of the Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the Act, was given that the word "may" used in the amended Section 148 of the Act, to be construed as a “rule” or “shall” and in case the Appellate Court was not to order the deposit, for which special reasons are to be assigned, that being an exception.

Thus the Appellate Court had rightly directed the applicant-appellant to deposit 20% of the compensation amount in view of the provisions and law laid down and this Court had also granted sufficient time to the petitioner for depositing of the same, despite that the said amount as mandatory to be deposited has not so been done, this Court is of the considered view that the petitioner who is the Director of the company does not deserve any relief.

In view of the facts and circumstances of the case as also the judgment in the case of **Surender Singh Deswal** (Supra), the present petition *sans* merit.

Resultantly, this Court finds no illegality or perversity in the impugned orders warranting intervention by this Court.

Petition stands dismissed.

November 16, 2022 **(AMAN CHAUDHARY)**
Rimpal **JUDGE**

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