

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

1. **CRM-M-30016 of 2021**
Date of Decision: January 13, 2022

Atul Goel **...Petitioner**

Versus

Vaibhav Jain **...Respondent**

2. **CRM-M-30654 of 2021**
Date of Decision: January 13, 2022

Atul Goel **...Petitioner**

Versus

Mukesh Chand **...Respondent**

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Fateh Saini, Advocate for the petitioner.
(in both petitions).

Mr. Pawan Kuamr Hooda, Advocate for the respondent
(in CRM-M-30016-2021).

Mr. Sandeep Singh Ghangas, Advocate for the respondent
(in CRM-M-30654-2021).

Amol Rattan Singh, J. (Oral)

Case heard by video conferencing.

By these petition, the petitioner seeks setting aside of the impugned order dated 11.02.2021 (Annexure P-3), passed by the learned appellate court in CRA no.342 of 2019, as also the impugned order of even date passed by the same court in CRA no.340 of 2019.

Notice of motion having been issued by this court (by a co-ordinate Bench) on 03.08.2021, the trial court (actually the appellate court) had been directed to adjourn the matter to a date beyond that fixed

by this court at that stage.

Thereafter the interim order having continued, on 24.11.2021 the following order was passed by this court:-

“ By these petitions, the petitioner seeks setting aside of the impugned order dated 11.02.2021 (Annexure P-3), passed by the learned appellate court in CRA no.342 of 2019, as also the impugned order of even date passed by the same court in CRA no.340 of 2019. The petitioner also seeks staying operation of the aforesaid orders.

Today, learned counsel for the petitioner has produced in court today an order passed by the Supreme Court on 20.10.2021, in SLP (Crl.) No.7745 of 2021, by which operation of the order passed by this court, dated 23.07.2021, is shown to be stayed, that order having been passed in CRM-M-19462-2021, titled as “Satbir Singh and another vs. State of Haryana and another”.

*Vide that order of this court, on the touchstone of the ratio of the judgment of the Supreme Court in **Surender Singh Deswal alias Col. S.S.Deswal and others vs. Varinder Gandhi**, 2020 (1) RCR (Crl.) 604, the petition filed by the petitioners in that case, had been dismissed.*

This court (co-ordinate bench), while doing so, had rejected the contention of the petitioners in that petition, to the effect that the order of the learned appellate court directing 20% of the amount of compensation ordered by the trial court be deposited as a pre-condition to considering the appeal on merits, was a very harsh order and therefore, it deserves to be set aside.

This court noticed that Section 148 of the Negotiable

*Instruments Act, 1881, had been introduced vide an amendment made on 01.09.2018, stipulating that an appellate court may order the appellant to deposit a sum of at least 20% of the fine or compensation awarded by the trial court, with the challenge made to the amendment having been dismissed by the Supreme Court in **Surinder Singh Deswals' case** (supra).*

*Consequently, counsel for the petitioner in these two petitions would be required to address arguments in terms of the ratio of the judgment in **Surinder Singh Deswals' case** (supra), because an order passed by the Supreme Court staying operation of an order or judgment of this court, in my opinion would not overrule a judgment laying down ratio on any particular issue, with a simple order staying operation of any particular judgment/order of this court, also possibly having been passed in exercise of jurisdiction under Article 142 of the Constitution of India, by the Supreme Court.*

Adjourned to 05.01.2022.

To be shown in the urgent motion list.

(A photocopy of this order be placed on the file of the connected case.)”

Today, learned counsel for the petitioner has again pointed out that in fact the appeals having come up for hearing for the first time before the appellate court on 22.08.2019, with the sentence imposed by the trial court on the present petitioner having been suspended, thereafter the impugned order, dated 13.07.2021, was passed, which reads as follows:-

“An application for exemption from personal appearance of accused Atul Goel moved. Heard. Due to circumstances explained in the application, presence of accused is

exempted for today only.

Lower court record not received. Arguments not advanced. Adjournment requested. Now to come up on 04.08.2021 for payment of 20% amount as well as arguments on appeal. Lower court record shall be also summoned for the date fixed.”

Very obviously the said order was passed almost two years after the appeals first came up before that court, and it was passed only upon counsel for the present petitioner (appellant before that court), having sought time to argue the appeals.

Consequently, though this order could have been passed by this court on a previous occasion also and obviously that basic fact was missed out, both the petitions are disposed of with a direction that the impugned order, directing payment of 20% of the amount of the cheques in question, shall be held in abeyance during the pendency of the appeals, subject to arguments being addressed by counsel for the appellant before that court (unless granted specific adjournment for good reasons to be duly recorded); and if counsel for the appellant seeks an adjournment for more than two dates, to argue the appeals, the impugned order passed by the appellate court, directing deposit of 20% of the aforesaid amount, would come into effect again, with this court to reiterate what it had already observed in a previous order, in terms of the ratio of the judgment of the Supreme Court in ***Surinder Singh Deswal's*** case (*supra*), to the effect that an appellate court would be within its jurisdiction to direct such deposit, very obviously in view of circumstances of any particular case. In my opinion, where a person convicted under the provisions of Section 138 of the Negotiable Instruments Act, 1881, has filed an appeal

and is avoiding to argue that appeal, the impugned order passed is very much justified. Hence, this order is passed, directing that deposit of 20% of the amount shall remain in abeyance only if the appeal is argued on behalf of the appellant before the appellate court, but if it is not argued as has been observed hereinabove, the impugned order would come into effect again immediately.

A copy of this order be placed on the connected file of this case.

January 13, 2022
sarita

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes