

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-37203-2022

Date of Decision: 10.10.2022

Vinay Kumar

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Rajesh Khandelwal, Advocate for the petitioner.

Mr. Tanuj Sharma, Assistant Advocate General, Haryana
for respondent No. 1.

Ms.Aakriti Mittal, Advocate for respondent No. 2.

ASHOK KUMAR VERMA, J. (ORAL)

1. Memo of appearance filed on behalf of respondent No. 2 is taken on record.

2. Through this petition under Section 482 Cr.P.C. prayer has been made for quashing of impugned orders dated 18.05.2022 and 06.08.2022 (Annexures P-3 and P-4, respectively) passed by learned Additional Sessions Judge, Hisar, in Criminal Appeal No. 153 of 2022 filed against the judgment of conviction and order of sentence dated 02.05.2022 (Annexure P-2) rendered by the Judicial Magistrate Ist Class, Hisar, in Criminal Complaint No. 706-II dated 06.10.2020 titled "M/s Sidhant Motors Pvt. Ltd. Vs. Vinay Kumar" filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act'), vide which the petitioner was directed to deposit 20% of the compensation amount

awarded by the trial Court within a period of 60 days in view of Section 148 of the NI Act.

3. Brief facts of the case are that complainant-company (respondent No. 2 herein) deals in sales and repairs of motor vehicles and petitioner-accused was working as Store In-charge in the company from very long time. During audit of the store, the parts worth Rs.30,00,000/- were found missing. The petitioner admitted in writing his liability to pay Rs.11,00,000/- out of the aforesaid total amount of Rs.30,00,000/- along with two other employees, namely, Dinesh Saini and Sandeep Range. In order to discharge his liability, petitioner issued a cheque bearing No. 010629 dated 11.07.2020, amounting to Rs.11,00,000/-, drawn on Sarva Haryana Gramin Bank, Jindal Chowk Branch, Hisar, in favour of complainant-company. However, on presentation said cheque was dishonoured with the remarks “insufficient funds”, vide memo dated 14.07.2020. Despite legal notice dated 12.08.2020, petitioner has not made any payment. Hence, respondent filed a complaint under Section 138 NI Act.

4. Vide judgment of conviction and order of sentence dated 02.05.2022, the petitioner was held guilty for commission of offence punishable under Section 138 of the NI Act and sentenced to undergo simple imprisonment for a period of one year and to pay a compensation of Rs.11,00,000/- i.e. the cheque amount, to the complainant company under Section 143(1) (proviso) of the NI Act read with Section 357(1)(3) Cr.P.C., within a period of one month from the passing of judgment.

5. Being aggrieved against the aforesaid judgment of

conviction and order of sentence, the petitioner has preferred an appeal along with the application under Section 389 Cr.P.C. for suspension of sentence and staying operation of impugned order regarding compensation during the pendency of the appeal. While disposing off the application for suspension of sentence of the applicant, the Additional Sessions Judge, Hisar, directed the petitioner to deposit 20% of total compensation amount awarded by the trial Court within 60 days from the date of that order i.e. 18.05.2022 (Annexure P-3) during the pendency of said appeal.

6. Aggrieved by the said order, the present petitioner has filed the present petition.

7. Learned counsel for the petitioner has submitted that the impugned order dated 18.05.2022 (Annexure P-3) is illegal. It is argued that the said direction is illegal inasmuch as in case, the petitioner is not able to pay the money as ordered, then the only course open would be to recover the amount by following the procedure as stipulated under Section 421 Cr.P.C. and the order of suspension of sentence could not be vacated, much less, automatically. In order to substantiate the above argument, learned counsel for the petitioner has relied upon a judgment dated 06.07.2022 passed by a co-ordinate Bench of this Court in ***CRM-M-4244-2022 'Amit Kumar (deceased) through his LR's mother Smt. Sushila Devi vs. State of Haryana and another'***.

8. Per contra, learned counsel for the respondent No. 2-complainant has submitted that the impugned order is in consonance with the law laid down by the Hon'ble Supreme Court in ***Surinder Singh***

Deswal @ Col. S.S. Deswal & Ors. vs. Virender Gandhi & Anr, 2020 (1) R.C.R. (Criminal) 604 and SLP (Criminal) No. 2953 of 2022, Ramveer Upadhyay and another vs. State of U.P. and another, decided on 20.04.2022.

9. I have heard learned counsel for the parties and perused the paper-book.

10. The question that arises for consideration in the present case is as follows:

Q. Whether while suspending the sentence of the appellant/convict, the Appellate Court in an appeal against conviction under Section 138 of the N.I. Act, can impose a condition that on non-deposit of minimum of twenty percent of the fine/compensation awarded by the trial court, as ordered by the Appellate Court while exercising its powers under Section 148 of the NI Act, the benefit of suspension of sentence would be liable to be automatically/consequently vacated?

11. To answer the said question, it will be necessary to consider Section 148 and 143-A of the N.I. Act, which are reproduced here-in-below:-

"148. Power of 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."

Section 143-A of the N.I. Act:-

"143-A. Power to direct interim compensation. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant -

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, 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 case being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the

amount paid or recovered as interim compensation under this section."

12. A perusal of Section 148 of the N.I. Act would show that it starts with a non-obstante clause stating therein that "notwithstanding anything contained in the Code of Criminal Procedure, 1973", in an appeal which has been filed against the conviction under Section 138 N.I. Act, the appellate Court has the power to ask the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation as awarded by the trial Court. Importantly, under sub-section (2), it has been mentioned that the amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order and the same is subject to an extension of another 30 days and thus, the maximum period provided for making the deposit is 90 days. A comparison of Sections 148 and 143-A would show that sub-section (5) as present in Section 143-A is conspicuously missing in Section 148. Sub-section (5) of Section 143-A states that the interim compensation payable under that Section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973. The legislative intent of not inserting a similar provision in Section 148 as provided under Section 143-A, thus, is very clear.

13. The Hon'ble Supreme Court in ***Surinder Singh Deswal @ Col. S.S. Deswal (supra)*** after considering all the issues/contentions, adjudicated upon the issue whether the first appellate Court is justified in directing the appellant/convict, convicted under Section 138 of N.I. Act, to deposit 25% of the compensation/fine imposed by the trial Court pending appeal, challenging the order of conviction and sentence, while

suspending the sentence under Section 389 Cr.P.C., held that it is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed 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 the same as having been vacated.

14. The facts and circumstances of the judgment relied upon by learned counsel for the petitioner are quite distinguishable from the facts of the present case, therefore, no benefit whatsoever of the same can be given to him.

15. In view of the discussion made above, this Court does not find any illegality or perversity in the impugned orders dated 18.05.2022 and 06.08.2022 (Annexures P-3 and P-4, respectively) . Therefore, power under Section 482 Cr.P.C. cannot be exercised in favour of the petitioner.

16. Dismissed.

October 10, 2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No