

CRM-M-42518-2022

Date of decision: 26.09.2022

Rajesh Sharma

.....Petitioner

versus

M/s Gagan Fibres Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**Present:** Mr. Manuj Nagrath, Advocate
for the petitioner.**NAMIT KUMAR, J.**

The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 27.07.2022 passed by the learned Additional Sessions Judge, Ludhiana in Criminal Appeal No.126 of 2020 (Rajesh Sharma versus M/s Gagan Fibers Pvt. Ltd.), whereby, the application filed by the complainant/respondent under Section 148 of Negotiable Instruments Act, 1881 has been allowed and the petitioner has been directed to pay 20% of the compensation i.e. Rs.3,07,828/- of Rs.15,39,142/- on the next date of hearing with a further direction that in case this amount is not paid then bail order shall be cancelled and petitioner shall be taken into custody as the bail granted to him is always subject to the decision of Section 148 of the Negotiable Instruments Act, 1881.

Briefly stated the facts of the case are that the respondent filed a complaint under Section 138 of the Negotiable Instruments Act read with Section 420 IPC against the petitioner titled as 'M/s Gagan Fibres Private

Ltd. versus Rajesh Sharma', COMA/924/2014 dated 13.02.2014 before the learned Judicial Magistrate 1st Class, Ludhiana on the basis of allegations that petitioner purchased polyester chips from the respondent-complainant from time to time on credit basis and that in discharge of the said invoices, the petitioner had issued eight cheques bearing Nos. 155141; 155145; 155147; 155148; 155150; 155175; 155179 & 155200 dated 16.12.2013 which were dishonoured with remarks 'Exceed Arrangement'.

On completion of trial, vide judgment dated 23.01.2020 (Annexure P-1) passed by the trial Court, the petitioner was convicted and sentenced to undergo rigorous imprisonment for two years along with a fine of Rs.5,000/- and in case of default, he was to undergo imprisonment for seven days and compensation to the tune of the amount of cheques only was awarded after the appeal or revision.

The petitioner filed an application under Section 389 (3) Cr.P.C. for suspension of sentence for enabling him to file an appeal against the judgment/order of sentence dated 23.01.2020. Vide order dated 23.01.2020 (Annexure P-4), the sentence of the petitioner was suspended for a period of one month i.e. upto 23.02.2020 subject to furnishing personal bonds in the sum of Rs.50,000/- to enable him to file an appeal, failing which, he shall be taken into custody to undergo the sentence.

Thereafter, the petitioner filed an appeal dated 17.02.2020 along with an application for suspension of sentence, against the above said judgment of conviction and order of sentence and the sentence of the petitioner was suspended by the Appellate Court during the pendency of the appeal, vide order dated 19.02.2020 till the disposal of the appeal and was

ordered to be released on bail subject to furnishing personal bonds in the sum of Rs.30,000/- with one surety in the like amount.

Thereafter, an application dated 25.03.2022 under Section 148 of the Negotiable Instruments Act, was filed by the complainant/respondent for directing the accused/appellant to deposit the cheque amount as compensation before the Court as per latest amendment in the Negotiable Instruments Act. The petitioner/convict filed reply to the said application and finally vide impugned order dated 27.07.2022, the said application was accepted by the learned Additional Sessions Judge, Ludhiana and the petitioner/convict was directed that 20% of the compensation i.e. Rs.3,07,828/- i.e. 20% of Rs.15,39,142/- be paid on the next date of hearing i.e. 08.09.2022 and it was further clarified that in case, this amount is not paid then the bail order shall be cancelled and the convict shall be taken into custody. The next date fixed for hearing is 07.10.2022.

Feeling aggrieved against the said order, the petitioner has filed the present petition.

I have heard learned counsel for the petitioner and have gone through records.

Learned counsel for the petitioner has submitted that Section 148 was inserted in the Negotiable Instruments Act with effect from 01.09.2018 and the said amendment is not applicable to the present case as the criminal complaint in the present case was filed by the complainant in the year 2014 i.e. prior to the said amendment and, therefore, the impugned order cannot be sustained and is liable to be set aside. He further submits that the condition imposed by the learned ASJ, Ludhiana in the order dated 27.07.2022 that the 20% amount if not paid, then the bail order shall be

cancelled and the convict shall be taken into custody is totally illegal as there was no such condition while suspending the sentence of the petitioner.

Section 148, which was inserted in the Negotiable Instruments Act by the Negotiable Instruments Amendment Act, 2018 (20 of 2018) w.e.f. 01.09.2018, 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 (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 143 A.

(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 day 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.”

The abovesaid amendment was examined by the Hon'ble Supreme Court in *Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi, 2019 (3) RCR (Criminal) 186*, and it was observed as under:-

“8. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the Negotiable Instruments Act were lodged/filed before the amendment Act NO.20/2018 by which Section 148 of the Negotiable Instruments Act came to be amended and therefore amended Section 148 of the Negotiable Instruments Act shall not be made applicable. However, it is required to be noted that at the time when the

appeals against the conviction of the appellants for the offence under Section 138 of the Negotiable Instruments Act were preferred. Amendment Act No.20/2018 amending Section 148 of the Negotiable Instruments Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C., 1973 to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the Negotiable Instruments Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in Section 148 of the Negotiable Instruments Act and while suspending the sentence in exercise of powers under Section 389 of the Cr.P.C., 1973 when the first appellate court directed the appellants to deposit 2.5% of the amount of fine/compensation as imposed by the learned trial Court, the same can be said to be absolutely in consonance with the Statement of objects and Reasons of amendment in Section 148 of the Negotiable Instruments Act.

8.1 Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtain stay on proceedings, the object and purpose of the enactment of Section 138 of the Negotiable Instruments Act was being frustrated the Parliament has thought it fit to amend Section 148 of the Negotiable Instruments Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the Negotiable Instruments 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 Negotiable Instruments 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 Negotiable Instruments 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 Negotiable Instruments 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 Negotiable Instruments Act stated hereinabove, on purposive interpretation of Section 148 of the Negotiable Instruments Act as amended, we are of the opinion that Section 148 of the Negotiable Instruments 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 Negotiable Instruments Act, even in a case where the criminal complaints for the offence under Section 138 of the Negotiable Instruments 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 Negotiable Instruments 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 Negotiable Instruments 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 Negotiable

Instruments 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 or the appellants would be contrary to the provisions of Section 148 of the Negotiable Instruments Act as amended is concerned, considering the amended Section 148 of the Negotiable Instruments Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the Negotiable Instruments Act, though it is true that in amended Section 148 of the Negotiable Instruments 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 Negotiable Instruments 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., 1973 to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the Negotiable Instruments 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 as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 of the Negotiable Instruments Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the Negotiable Instruments Act, but also Section 138 of the Negotiable Instruments 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 realize 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 Negotiable Instruments Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the Negotiable Instruments Act and also Section 138 of the Negotiable Instruments Act.”

In the above said case, Hon’ble Supreme Court held that Section 148 of the Negotiable Instruments Act is to be retrospective and to be applicable to all appeals filed against the order of conviction and sentence for the offence under Section 138 of the Negotiable Instruments Act, even in a case where the criminal complaints for the offence under Section 138 of the Negotiable Instruments Act were filed prior to

amendment w.e.f. 01.09.2018 and Hon'ble Supreme Court did not make/carve out any distinction in appeals filed before and after 01.09.2018. In view of the observations of Hon'ble Supreme Court, Section 148 of the Negotiable Instruments Act was applicable to appeal filed by the petitioner on 17.02.2020 against judgment of conviction and order of sentence dated 23.01.2020.

Therefore, the said contention raised by the petitioner is totally baseless and is liable to be rejected.

So far as the contention raised by learned counsel for the petitioner that the condition imposed in the order dated 27.07.2022 to the effect that in case the 20% amount of compensation is not deposited, then the bail order shall be cancelled is concerned, is totally erroneous. The Coordinate Bench of this Court in the case of 'Surender Deswal and others vs State of Haryana and another' 2019 (4) R.C.R. (Criminal) 801 has held that once the condition for deposit of compensation is held to be valid, the petitioner has no choice except to deposit the said amount, failing which, the concession of suspension of sentence can always be cancelled. Relevant para of the said judgment reads as under:-

13. Concededly, till date, neither the petitioner(s) have made any deposit; nor coming forward to participate with the proceedings before learned Appellate Court; nor have surrendered before learned trial Court in terms of the impugned order, therefore, in the opinion of this Court, they have no respect for the judicial orders, passed in the matter from time to time including by Hon'ble Supreme Court. While taking into consideration the track record of the petitioner(s), it can be safely said that present bunch of petitions is nothing, but hair-splitting the construction of Section 148 of the Amendment Act, which has already been duly answered by the Hon'ble Supreme Court with the result that Appellate Court is well empowered to impose the condition for deposit of 25% amount of compensation at the time of suspension of sentence. Once the condition for deposit of 25% is held to be valid and attained finality, then petitioner(s) have no choice except to fulfill their commitment. Thus, the irresistible conclusion is that petitioner(s) have taken the frivolous steps just to prolong the matter on one pretext or the other. More than sufficient opportunities have already been granted to them, but neither the amount in question has been deposited; nor they are appearing before learned Appellate

Court and thus trying to hoodwink the Court proceedings. Undisputedly, the concession of suspension of sentence was granted to the petitioner(s) subject to the valid pre-condition for deposit of 25% amount of compensation in terms of Section 148 of the Amendment Act and in the eventuality of breach of the same, learned Appellate Court was not only competent to cancel the order of suspension of sentence, but was also fully justified to maintain the sanctity of the judicial proceedings and to uphold the dignity of the Court while passing the impugned order. In the case(s) of this nature, if the steps for cancellation of suspension of sentence had not been taken at this juncture by learned Appellate Court, then the Judicial Forums are likely to become the laughing stock at the hands of unscrupulous litigants, resulting into failure of rule of law and that would be travesty of justice.

The said judgment was challenged before the Hon'ble Supreme Court in a case 'Surinder Singh Deswal @ Col. S.S. Deswal & Ors. vs. Virender Gandhi & Anr.' 2020 (1) SCC (Criminal) 506 and the same was dismissed with the observations which reads as under:-

13. The second round of litigation which was initiated by the appellant by filing application under Section 482 Cr.P.C., 1973 was against the order dated 20.07.2019 passed by the Additional Sessions Judge, Panchkula by which Additional Sessions Judge held that the appellant having not complied with the direction dated 01.12.2018 to deposit 25% of the amount of compensation, the order of suspension of sentence shall be deemed to have been vacated. The order dated 20.07.2019 was an order passed by the Additional Sessions Judge on account of failure of the appellant to deposit 25% of the amount of compensation. The suspension of sentence on 01.12.2018 was subject to the condition of deposit of 25% of the amount of compensation, when the condition for suspension of sentence was not complied with, learned Additional Sessions Judge was right in taking the view that order of suspension of sentence shall be deemed to have been vacated. Challenge to order dated 20.07.2019 has rightly been repelled by the High Court by its elaborate and well considered judgment dated 10.09.2019.

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18. The High Court is right in its opinion that question No.2 as framed in Vivek Sahni's case was not correctly considered. When suspension of sentence by the trial court is granted on a condition, non compliance 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 non-compliance 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.

Therefore, the said plea raised by the learned counsel for the petitioner deserves rejection.

Another plea has been raised by learned counsel for the petitioner that in the impugned order, 60 days' time has not been granted for depositing 20% amount in terms of Section 148 of the N.I. Act, as the said order was passed on 27.07.2022 and the petitioner was directed to deposit the amount on 08.09.2022 and now the case stands adjourned for 07.10.2022. This plea on behalf of the petitioner seems to be justified and can be considered by the learned lower Appellate Court, in case any such application is filed by the petitioner.

Needless to assert that the said Court shall consider and decide such application, if filed, on behalf of the petitioner in accordance with law.

In view of the above, the order dated 27.07.2022 passed by the learned Additional Sessions Judge, Ludhiana, is perfectly legal and valid and does not call for any interference by this Court and consequently, the present petition stands disposed off in the above terms.

26.09.2022
Neha

(NAMIT KUMAR)
JUDGE

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