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

**Sr. No.126** **CRM-M-43625-2022**
Date of Decision: September 21, 2022

Bharat Bhushan ------Petitioner

Versus

State of Haryana and another ----Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. Nipun Bhardwaj, Advocate
for the petitioner.

**AMAN CHAUDHARY, J. (Oral)**

Present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 10.08.2022 (Annexure P-3) and order dated 16.08.2022 (Annexure P-4) whereby while granting suspension of sentence, condition has been imposed by the appellate Court to deposit a part of compensation by the petitioner in view of Section 148 of the Negotiable Instruments (Amendment) Act, 2018.

On behalf of the petitioner, the submission made by the learned counsel is that once the remedy of appeal has been availed of by the petitioner and it is pending, the condition to deposit 20% of the compensation as imposed by the learned Appellate Court was illegal and not sustainable in the eyes of law especially in view of the cheques in question being dated 10.01.2017, 20.01.2017 and 30.01.2017, which got dishonoured on 17.04.2017 and complaint was filed on 07.06.2017, whereas Section 148 of the Act was incorporated in the statute vide amendment with effect from 01.09.2018, which cannot apply retrospectively. He further submits that the financial condition of the petitioner is not sound, as such he is unable to desposit the said amount.

Learned counsel for the petitioner has also submitted that the

Appellate Court has also ignored the provisions of Section 389(1) Cr.P.C. while imposing the condition of depositing 20% compensation, which thus, is also contrary to the said provisions. Reliance is placed on the judgment of Hon'ble The Supreme Court of India in the case of ***Dalip S.Dahanukar vs. Kotak Mahindra Co. Ltd. And another*** reported as ***(2007) 6 SCC 528***, wherein the order imposing condition to pay compensation of Rs.5 lacs upon the accused while suspending the sentence of one month was set aside.

He has also placed reliance on the judgment of the Rajasthan High Court in ***Mahendra Das Vaishnav vs. The State of Rajasthan 2017(2) NIJ 592***, wherein it was held that no such pre-condition of depositing part of compensation can be imposed by an appellate Court, while exercising powers under Section 389(1) Cr.P.C.

Heard the learned counsel for the petitioner.

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?*

*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:*

*"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.*
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> *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 while deciding the issue with regard to restrospectivity, held that the provisions of Section 148 of the Act shall also govern the cases where the criminal complaints were filed prior to the date of amendment i.e. 1.9.2018. The relevant para reads thus:

> *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 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."*

The word *'may'* used in Section 148 of the Act has been interpreted by Hon'ble The Supreme Court. The para relevant in this regard reads thus:-

> *"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 Cr.P.C. 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."*

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.

Though in this case, the complaint had been filed in the year 2017, wherein the petitioner was convicted and sentenced on 11.07.2022. The sentence was suspended vide order dated 10.08.2022 subject to deposit of 20% in terms of NI Act as amendment made with effect from 01.09.2018 which as held by Hon'ble The Supreme Court in the case of Surinder Deswal was made to apply retrospectively. The assertion of the petitioner that the complaint was filed prior to the amendment would thus be no ground for non-compliance of the aforesaid provision of law as having been eludicatedly held, similarly the plea of the petitioner not being in good financial condition, is not a ground sufficient to not comply with the order passed by the Appellate Court while suspending the sentence.

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.

**(AMAN CHAUDHARY)**
**JUDGE**

**21.09.2022**
***Atul/S.Sharma***

**Whether speaking/ reasoned - Yes/No**
**Whether reportable - Yes/No**