

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43439-2020 (O & M)

Date of decision: 07.04.2022

M/s Sidhi Vinayak Agencies and anr.

..... Petitioners

V/s

M/s Kalatmika Designs Pvt. Ltd. and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rahul Bhargava, Advocate, for the petitioners.

Mr. Sushant Kareer, Advocate, for respondent No.1.

Mr. H.S. Multani, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing/setting aside of the order dated 09.03.2020 passed by Ld. District Judge, Ludhiana (Annexure P-1), whereby the petitioner was directed to deposit 20% of the compensation amount, as a pre-condition for his suspension of sentence during the pendency of the appeal.

Vide judgment dated 13.02.2020 of the Ld. Judicial Magistrate First Class, Ludhiana the petitioner was convicted for an offence under Section 138 of Negotiable Instruments Act. He was sentenced to undergo rigorous imprisonment for a period of two years. Under Section 357(3) Cr.P.C. a compensation of Rs.5,29,518/- (Rupees Five Lacs Twenty Nine Thousand and Five Hundred Eighteen only) was awarded to the complainant. The petitioner preferred an appeal which is pending before Ld.

Sessions Judge, Ludhiana. Vide order dated 09.03.2020 the Ld. Sessions

Judge suspended the substantive sentence imposed upon the petitioner, subject to the condition of deposit of 20% of the compensation amount of Rs.5,29,518/- awarded by the Ld. Trial Court within sixty days. It was further directed that in the event of the petitioner doing so, recovery of remaining amount of compensation shall remain stayed during the pendency of the appeal.

The learned counsel for the petitioner has contended that deposit of 20% of the compensation amount cannot be made a pre-condition for the suspension of sentence. He relied upon the decision of Madras High Court in **L.G.R. Enterprises, represented by its proprietrix Sindu @ Lakshmi and others Vs. P. Anbazhagan and others 2019 (3) MLJ (Criminal) 423** to contend that the discretionary power that is vested with the Court in ordering for interim compensation must be supported by reasons. He argued that no reasons have been given by the Ld. Appellate Court in directing the petitioner to deposit the amount.

On the other hand Learned counsel for the respondents relied upon the judgment dated 08.01.2020 of Hon'ble Supreme Court in **Criminal Appeal Nos.1936-1963 of 2019** titled '**Surinder Singh Deswal @ Col. S.S. Deswal and others Vs. Virender Gandhi and another**' and a judgment of this Court in **Ram Singh Vs. Tek Chand, 2020(2) RCR(Crl.) 448**.

In Ram Singh's case (supra), this Court while discussing the relevant provisions of the Negotiable Instruments Act also

considered the law laid down by the Hon'ble Supreme Court in Surinder Singh Deswal's case (supra) and it was observed:-

*“10. Section 389(1) of the Cr.P.C. empowers the Appellate Court to suspend the sentence and grant bail during pendency of the appeal. Section 357 (2) of the Cr.P.C. provides that compensation awarded out of fine in cases subject to appeal shall be payable after the period allowed for presenting the appeal has elapsed and if an appeal be presented after the decision of the appeal. In **Dilip S. Dahanukar Vs. Kotak Mahindra Limited : 2007 (2) R.C.R. (Criminal) 636** Hon'ble Supreme Court held the abovesaid statutory requirement be applicable also to compensation awarded under Section 357 (3) of the Cr.P.C. However, in **Surinder Singh Deswal @ Col. S.S. Deswal's Case (Supra)** Hon'ble Supreme Court held that in view of the opening words of amended Section 148 of the N.I. Act “notwithstanding anything contained in the Code of Criminal Procedure.....” irrespective of the provisions of Section 357 of the Cr.P.C. pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be minimum of 20% of the fine or compensation awarded by the trial Court.*

11. It may also be observed here that Section 143-A(5) of the N.I. Act provides that the interim compensation payable under Section 143-A (1) of the N.I. Act may be recovered as if it were a fine under Section 421 of the Cr.P.C. but Section 148 of the N.I. Act does not contain any provision similar to that made in Section 143-A(5) of the N.I. Act for recovery of the

amount ordered to be deposited under Section 148(1) of the N.I. Act as fine under Section 421 of the Cr.P.C. and absence of such provision is not without purpose and shows the legislative intent. Since Section 148 of the N.I. Act is special provision, which constitutes an exception to general rule of stay of recovery of fine or compensation during pendency of appeal embodied in Section 357(2) of the Cr.P.C. Condition of deposit of the amount under Section 148(1) of the N.I. Act is intended/postulated to be mandatory requirement to be complied with for availing the protection of order of suspension of sentence and grant of bail during pendency of the appeal. It follows that in case of failure of the appellant to deposit the amount ordered to be deposited under Section 148(1) of the N.I. Act, the order of suspension of sentence and grant of bail during pendency of the appeal would stand cancelled and the appellant shall be liable to be taken in custody for execution of the sentence.

12. In view of insertion of Section 148 by the Negotiable Instruments (Amendment) Act, 2018 (20 of 2018) w.e.f. 01.09.2018 and law laid down by Hon'ble Supreme Court in Surinder Singh Deswal @ Col. S.S. Deswal's Case (Supra), observations made by Coordinate Benches in order dated 01.12.2017 passed in CRM-M-37682-2017 (O&M) titled 'Arvind and another Vs. Joginder Singh Bedi' and order dated 22.03.2018 passed in CRM-M-12122-2018 titled 'Jatinder Kumar Sarita Vs. Usha Suri' (relied upon by the learned Counsel for the petitioner) regarding impermissibility of imposing of condition of deposit at the time of suspension of sentence and grant of bail during pendency of the appeal by the Appellate Court in complaint case under Section 138 of the N.I. Act do not hold good and are not applicable and of any help to the petitioner."

In view of the clear enunciation of law in the judgments relied upon by Ld. Counsel for the respondents there is no merit in the present petition and the same is dismissed.

April 07, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

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