

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

138(2)

CRM-M No.46005 of 2022
Date of Decision: 30.09.2022

Chottu Ram ...Petitioner

Versus

Pawan Kumar Walia ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. G.S. Bhullar, Advocate for the petitioner.

ANOOP CHITKARA, J.

Criminal Complaint	NACT/843/2018 Date of Decision: 10.06.2022 Order on quantum of Sentence on: 14.06.2022
Criminal Appeal	No.57 of 2022 CNR No.HRPK010023592022 Date of order: 07.07.2022

Aggrieved by the direction to deposit 25% of compensation as a condition precedent while suspending the sentence in an appeal against the conviction, the convict has come up before this Court against the condition.

2. Vide impugned judgment, the petitioners were convicted for commission of offence under Section 138 of Negotiable Instruments Act, 1881 (for short N.I. Act). Feeling aggrieved, they had challenged the same before the Sessions Court. While suspending the sentence, vide order dated 07.07.2022, learned Sessions Judge, Panchkula directed the appellant in the aforesaid terms.

3. Section 148 of the N.I. Act was amended and w.e.f. 01.09.2018 Section 148 was inserted. As per Section 148 of N.I. Act, it is within the powers of the appellate Court to order payment pending appeal against conviction. As per Section 148(1), the Appellate Court can do the same on its own without there being any application filed by the complainant.

4. In Surinder Singh Deswal v. Virender Gandhi, 2019 LawSuit(SC) 1245, Hon'ble Supreme Court holds,

[8] It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which Section 148 of the N.I. Act came to be amended and therefore amended Section 148 of the N.I. 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 N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I. 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. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. 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 N.I. Act and while suspending the sentence in exercise of powers under Section 389 of the Cr.P.C., when the first appellate court directed the appellants to deposit 25% 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 N.I. Act.

5. Without going into the petition's merits, the interest of justice would suffice if the appeal pending before the appellate Court is taken on the priority. This Court requests the learned Appellate Court to decide these appeals **on top priority preferably on or before Nov 30, 2022.**

6. It is clarified that the Appellate Court shall decide the appeal notwithstanding the non-deposit of the instruments described above, and no coercive steps are taken against the convict until the time mentioned above period. The convict/appellant is directed not to seek any adjournment; however, if the appellant seeks any adjournment, then this order shall be recalled automatically under section 362 read with 482 Cr.P.C., without any further reference to this court. If the counsel for the appellant is absent or seeks adjournment, then it shall also be open for the Appellate Court to appoint a legal aid counsel for the convict and to hear the appeal on merits. The complainant is requested not to seek any adjournment. Parties to inform the concerned court.

The petition is disposed of with the aforesaid observations. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.09.2022
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.