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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6547-2022
Date of decision : 15.02.2022

Rajni Bala

...Petitioner

Versus

Santosh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Harjinder Singh, Advocate for
Mr. A.S. Khinda, Advocate for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

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VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing the impugned order dated 25.02.2020 (Annexure P-3) passed by the Additional Sessions Judge, Kapurthala in CRA-47-2020 arising out of complaint bearing NACT-6-2018 dated 06.02.2018 registered under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as "the Act of 1881") titled as "Santosh Kumar Vs. Rajni Bala" whereby the petitioner was directed to deposit 20% of the compensation amount in view of Section 148(1) of the Act of 1881.

Learned counsel for the petitioner has submitted that the impugned order is bad inasmuch as the petitioner is a poor lady and is not in a position to pay the said money.

This Court has heard the learned counsel for the petitioner and has perused the paper book.

The complaint under Section 138 of the Act of 1881 was filed by Santosh Kumar-complainant against the present petitioner on the allegations that the loan amounting to Rs.2,50,000/- was taken by the present petitioner and to discharge the said loan, cheque No.635759 dated 29.11.2017 of an amount of Rs.2,50,000/- was issued by the petitioner drawn over Dena Bank, Kapurthala from her account in favour of the complainant. The said cheque was dishonoured on account of "funds insufficient" and thereafter, the legal notice was served. Since, money is not paid, thus, complaint under Section 138 of the Act of 1881 was filed. The Judicial Magistrate, Ist Class, Kapurthala, after considering the entire material on record, had convicted and sentenced the present petitioner under Section 138 of the Act of 1881 for a period of one year rigorous imprisonment and further directed the petitioner to pay compensation to the tune of Rs.2,50,000/- to the complainant. Thereafter, the petitioner had filed an appeal and vide order dated 25.02.2020, the said appeal was admitted and an application under Section 389 of Cr.P.C. was also filed alongwith the appeal seeking suspension of sentence and the same was also granted to the petitioner. Further, direction was given to the petitioner to deposit 20% of the compensation amount in view of Section 148(1) of the Act of 1881. The said direction is in consonance with the power of the Appellate Court under Section 148 of the Act of 1881. Section 148 of the Act of 1881 is reproduced hereinbelow:-

"*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."

From the above, it is apparent that as a matter of Rule, the Appellate Court has the power to direct an appellant, who has filed an appeal against the judgment of conviction under Section 138 of the Act of 1881 and the order of sentence, to deposit a minimum of 20% of the fine or compensation so awarded by the trial Court. The same has been done by the

Appellate Court in the present case. No meaningful argument has been addressed by the learned counsel for the petitioner for challenging the same. Merely stating that the petitioner is a poor lady would not exempt the petitioner from making the said deposit moreso, when the trial Court had found that she had taken a loan of an amount of Rs.2,50,000/- from the complainant and the cheque issued by her in this respect, has been dishonoured. There is nothing on record prima facie to show that the petitioner is a poor lady. Moreover, the impugned order was passed on 25.02.2020 and the present petition has been filed in the year 2022 after a delay of almost 2 years and nothing has been mentioned in the petition so as to show what proceedings have taken place after the passing of the impugned order.

Keeping in view the abovesaid facts and circumstances, the present petition is dismissed.

15.02.2022 **(VIKAS BAHL)**
Pawan **JUDGE**

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

Whether reportable:- **Yes/No**