

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

119

CRM-M-49006-2022
Date of Decision : 21.10.2022

Anita

.... Petitioner

Versus

Ravi Kumar

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Ramesh Sharma, Advocate for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of impugned order dated 06.09.2022 (**Annexures P-3**) passed by learned Additional Sessions Judge, Fazilka, in Criminal Appeal No. 206 of 2022 titled as 'Anita Vs. Ravi Kumar' whereby the sentence of the applicant/appellant has been suspended and the petitioner was directed to deposit 12% of the compensation amount awarded by the trial Court within a period of 60 days.

Brief facts of the case are that the petitioner had borrowed an amount of Rs.2,50,000/- from the respondent and in order to discharge her legal liability, the petitioner issued a cheque bearing No.036514 dated 18.02.2017 drawn on IDBI Bank, Branch Abohar to the respondent for a sum of Rs.2,50,000/- and when the said cheque was presented by the respondent, the same was dishonoured with remarks '*Funds Insufficient*'. Thereafter, the respondent issued a legal notice dated 06.03.2017 to the petitioner but despite that the petitioner has failed to make the payment.

Hence, respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') against the petitioner.

Vide judgment of conviction and order of sentence dated 12.08.2022, the petitioner was held guilty for commission of offence punishable under Section 138 of the N.I. Act and sentenced to undergo simple imprisonment for a period of two years and to pay a compensation of Rs.2,50,000/- i.e. the cheque amount, to the respondent under Section 357 of the Cr.P.C. and in case of default of payment of compensation to further undergo simple imprisonment for a period of one month.

Being aggrieved against the aforesaid judgment of conviction and order of sentence, the petitioner has preferred an appeal along with the application under Section 389 Cr.P.C. for suspension of sentence during the pendency of the appeal. While disposing off the application for suspension of sentence of the petitioner, learned Additional Sessions Judge, Fazilka, directed the petitioner to deposit 12% of total compensation amount awarded by the trial Court within 60 days from the date of that order i.e. 06.09.2022 (Annexure P-3) during the pendency of said appeal.

Aggrieved by the said order, the petitioner has filed the present petition.

Learned counsel for the petitioner has submitted that the impugned order dated 06.09.2022 (Annexure P-3) is illegal. It is argued that the said direction is illegal inasmuch as in case, the petitioner is not able to pay the money as ordered, then the only course open would be to

recover the amount by following the procedure as stipulated under Section 421 Cr.P.C. and the order of suspension of sentence could not be vacated, much less, automatically. The complaint was filed in the year 2017 and Section 143-A and 148 of the N.I. Act were amended in the year 2018. Therefore, Sections 143-A and 148 of the N.I. Act are not applicable in the present case as the complaint in the present case was filed before the amendment. In order to substantiate the above argument, learned counsel for the petitioner has relied upon a judgment passed by Hon'ble Supreme Court in ***G.J. Raja Vs. Tejraj Surana : 2019(3) RCR (Criminal) 959.***

I have heard learned counsel for the petitioner and perused the paper-book.

For ready reference, Section 148 and 143-A of the N.I. Act are reproduced here-in-below:-

"148. Power of Appellate Court to order payment pending appeal against conviction.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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."

Section 143-A of the N.I. Act:-

"143-A. Power to direct interim compensation. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant -

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, 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 case being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section."

The point of law, regarding applicability of amended Sections 143-A and 148 of the N.I. Act in the present case, raised by learned counsel for the petitioner, has already been considered in detail and decided by a Co-ordinate Bench of this Court in *M/s Ginni Garments and another vs. M/s Sethi Garments and another : 2019 (2) R.C.R. (Criminal) 833*, wherein, it has been held that the procedure for recovery of fine or compensation from appellant in pending appeal already existed in Cr.P.C even before adding Section 148 of the Act. Therefore, no new aspect of coercive recovery of fine or compensation from the appellant is being freshly created through this amended provision. This judgment stands upheld by the Hon'ble Apex Court in *Surinder Singh Deswal @ Col. S. S. Deswal and others vs. Virender Gandhi, 2019 (3) R.C.R. (Criminal) 186*.

Therefore, in view of the aforesaid judgments rendered in *M/s Ginni Garments* and *Surinder Singh Deswal's cases (supra)*, the present petition is hereby dismissed and impugned order dated 06.09.2022 (**Annexures P-3**) passed by learned Additional Sessions Judge, Fazilka is upheld.

21.10.2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No