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

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CRR-2589-2022(O&M)
Date of decision: 29.11.2022

M/S SHREE SAI BABA TRADERS

....Petitioner

Versus

KOTAK MAHINDRA BANK

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. Ajay Ghangas, Advocate
for the petitioner.

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AMAN CHAUDHARY. J.

Present revision petition has been filed challenging the impugned order dated 31.08.2022 in Criminal Appeal No.187 of 2022 passed by learned Additional Sessions Judge, Panipat.

On behalf of the petitioner, the submissions raised is that the Lower Appellate Court has without considering the facts of the present case directed the petitioner to deposit 20% of the cheque amount within a period of 60 days. The fact that in the entire complaint it has not been mentioned about the total amount repaid by the petitioner to the bank for the cash credit loan facility obtained by the petitioner of Rs.125 lacs. The petitioner had deposited Rs.102 lacs with the bank as full and final payment, however, the bank had not issued any letter with regard to the aforesaid settlement. The cheque amounting to Rs.53,15,357/- had been misused by the complainant, being a blank cheque taken from the petitioner at the time of sanction of the loan. The bank had released the mortgaged property taken as security against loan, in which regard, a letter dated 04.07.2016 had been written by the bank. Besides that letters dated 02.06.2016 and 06.10.2016 were also sent by bank to guarantor Vishakha, Manju Garg and Deepak Garg regarding release of collateral. The respondent-bank had also filed a complaint under Section 138 of the N.I. Act against the guarantor Deepak Garg and Manju Garg with regard to dishonour of cheque amounting to Rs.32,63,483 before the Judicial Magistrate, Nasik, during the pendency of which, the matter was settled and the entire amount was paid which led to withdrawal of the complaint by the bank vide order dated 29.12.2018.

Heard.

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**.—
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> (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."

The aforesaid provision was elucidately interpreted by Hon'ble The Supreme Court of India in case of **Surender Singh Deswal Vs. Virender Gandhi (2019) 11 SCC 341**, while considering the statement of objects and reasons of the amendment in Section 148 of the Act. 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:*
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> > *"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 further held that the provisions of this Section shall 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."

With regard to the language used in Section 148 of the Act, Hon'ble the Supreme Court, has interpreted the word 'may' used in the aforesaid provision to be construed as a rule or shall keeping in view the statement of objects and reasons of amending the said section, observed that, “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."

It is deducible from the judgment in the case of **Surender Singh Deswal** (supra), wherein while considering a number of judgments including in case of Dalip S. Dahanukar v. Kotak Mahindra Co. Ltd. 2007 6 SCC 528, it has been held that by way of the amended provision, no substantive right of appeal has been taken away and/or affected. It was further explicated 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 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 to deposit, that would be as an exception, for which special reasons are to be assigned.

The issues as raised in the present revision inasmuch as the alleged settlement of the petitioner of the loan amount with the bank, regarding which no letter had been issued; alleged misuse of cheque by complainant; the release of mortgage property obtained as security against loan; the letter written regards the same to the petitioner as also to the guarantors regarding release of collateral or the complaint under Section 138 of the N.I. Act having been filed against the guarantors before the Judicial Magistrate Nasik having been withdrawn based on payment of entire amount by them, are all matters to be adjudicated by the Appellate Court in the appeal, which is pending adjudication before it. The challenge before this Court as raised by the petitioner is only with regard to the order dated 31.08.2022 passed by the Appellate Court wherein in view of the provisions of Section 148 of the N.I. Act, the appellant has been directed to deposit 20% of the amount of compensation as imposed by the trial Court under Section 357(3) CrPC within a period of 60 days as contemplated in the said provision, failing which the bail granted to the appellant and his suspension of sentence was to automatically stand cancelled.

This Court finds no illegality or perversity in the order impugned in the present petition, the same being in consonance with the provision of Section 148 of the N.I. Act as elucidatedly interpreted by Hon'ble The Supreme Court of India in the case of **Surender Singh Deswal** (s*upra*), wherein it had in no uncertain terms held that in case the Appellate Court was not to order the deposit, that would be an exception, for which special reasons are to be assigned.

The present petition *sans* merit. Consequentially the present revision petition is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

November 29, 2022
S.Sharma(syr)

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