

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55054-2019 (O&M)

Reserved on:14.01.2022

Pronounced on: 18.01.2022

Rajesh Kumar

...Petitioner

Versus

State of Haryana and another

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vivek Goyal, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Rishi Pal Singh, Advocate for respondent No.2.

ANOOP CHITKARA, J.

1. The petitioner who stands convicted under Section 138 of Negotiable Instruments Act, has come up before this Court challenging the deposit of 20% of the compensation awarded by the Appellate Court.
2. Challenging the conviction whereby the petitioner was sentenced to undergo simple imprisonment for six months and was directed to pay compensation of Rs.90 lacs which was double to the cheque amount, the convict had filed an appeal before the Session Judge, Kurukshetra.
3. Vide impugned order dated 26.09.2019 (Annexure P-3), learned Additional Sessions Judge directed the convict to deposit 20% of the compensation awarded by the trial Court within 60 days.
4. Challenging the said order the petitioner came up before this court under Section 482 Cr.P.C.
5. As per Section 148 of Negotiable Instruments Act, it is within the power of the appellate Court to order payment pending the appeal against conviction and also to order deposit of such sum and deposit a sum which is minimum of 20% of the fine of the compensation awarded by the trial

court

6. In **Surinder Singh Deswal @ Col. S.S. Deswal and others vs. Virender Gandhi**, in para Nos.7 & 8, the Supreme Court of India held as follows:-

....“7. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the NI Act were lodged/filed before Amendment Act 20 of 2018 by which Section 148 of the NI Act came to be amended and therefore amended Section 148 of the NI 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 NI Act were preferred, Amendment Act 20 of 2018 amending Section 148 of the NI Act came into force w.e.f. 1-9-2018. Even, at the time when the appellants submitted application(s) under Section 389 CrPC to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the NI Act came into force and was brought on statute w.e.f. 1-9-2018. Therefore, considering the object and purpose of the amendment in Section 148 of the NI Act and while suspending the sentence in exercise of powers under Section 389 CrPC, 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 NI Act.

7.1. 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 NI Act was being frustrated, Parliament has thought it fit to amend Section 148 of the NI Act, by which the first appellate court, in an appeal challenging the order of conviction under Section 138 of the NI Act, is conferred with the power to direct the convicted appellant-accused 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 NI Act, it cannot be said that any vested right of appeal of the appellant-accused has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the NI 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 NI Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in GarikapatiVeeraya [GarikapatiVeeraya v. N. Subbiah Choudhry, AIR 1957 SC 540] and Videocon International Ltd. [Videocon International Ltd. v. SEBI, (2015) 4 SCC 33] , 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 NI Act stated hereinabove, on purposive interpretation of Section 148 of the NI Act as amended, we are of the opinion that Section 148 of the NI 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 NI Act, even in a case where the criminal complaints for the offence under Section 138 of the NI Act were filed prior to Amendment Act 20 of 2018 i.e. prior to 1-9-2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the NI 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 NI Act, as amended.

8. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the NI 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 NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, though it is true that in the amended Section 148 of the NI 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 NI 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 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the NI 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 NI Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the NI Act, but also Section 138 of the NI Act. The 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 dishonour of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, Parliament has thought it fit to amend Section 148 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the

Objects and Reasons of the amendment in Section 148 of the NI Act and also Section 138 of the NI Act.”

7. I have analysed the impugned order under the provisions of Section 148 of Negotiable Instruments Act and also in the light of the pronouncement of Hon’ble Supreme Court of India in ***Surinder Singh Deswal’s case (supra)***.

8. I do not find any illegality in the impugned order, as such the petition stands dismissed and all interim orders are vacated. It is clarified that dismissal of this petition shall not come in the way in case the accused/convict avails legal remedies as may be available to him in accordance with law. Pending applications, if any, stand disposed of.

9. This case is pending since 2016. Perusal of the present petition and the applications point out that the accused is intentionally delaying the matter. Given above, the Appellate Court is requested to expedite the matter.

(ANOOP CHITKARA)
JUDGE

18.01.2022
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No