

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 70 of 2020

Parmeswar Shaw

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Satadru Lahiri.

For the State : None.

For the Opposite Party : None

Heard on : 11.07.2023

Judgment on : 25.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order being no. 4 dated 10.12.2019 passed by the Learned Additional District & Sessions Judge, 1st Court, Sealdah, South 24 Parganas in Criminal Appeal No. 17 of 2019 arising out of Complaint Case No. C/786 of 2011 under Section 138 of the Negotiable Instruments Act, 1881.
2. The petitioner's case is that the opposite party no. 2 filed a complaint case against the petitioner before the learned Additional Chief Judicial Magistrate, Sealdah under Sections 138 of the Negotiable Instruments

Act, 1881 which was subsequently transferred to the learned Judicial Magistrate, 6th Court, Sealdah where the same was tried and the petitioner was convicted under Section 138 of the said Act by the judgment and order of conviction dated 26.07.2019, which constrained the petitioner to prefer an appeal against the said order of conviction being Criminal Appeal No. 17 of 2019 before the learned Additional District & Sessions Judge, Sealdah.

3. The allegations leveled against the petitioner are inter alia to the effect that complainant/O.P. No. 2 intended to purchase a flat belonging to the petitioner and paid a sum of Rs.4,15,000/- in several instalments. Subsequently, the petitioner refused to sell the flat and the complainant asked for return of his money. The petitioner, in discharge of the alleged liability, issued the cheque in question in favour of the complainant/opposite party no. 2 and on presentation of the same to the Banker of the petitioner, it was dishonoured.
4. After trial of the case and after hearing of the arguments of the parties herein, the learned Magistrate of the trial Court by an order dated 26.07.2019 has been pleased to convict the accused/petitioner and sentenced him to suffer simple imprisonment for a period of two months and to pay fine of Rs.6,00,000/- in default to suffer further simple imprisonment for one month.
5. Being aggrieved by and dissatisfied with the said judgment and order of conviction dated 26.07.2019 passed by the said learned Magistrate, the petitioner preferred an appeal before the learned Additional District & Sessions Judge, Sealdah which was registered as Criminal Appeal No. 17

of 2019 and the petitioner also prayed for stay of the operation of the impugned order of sentence passed by the learned Magistrate.

6. The learned Sessions Court admitted the said appeal on 10.12.2019 and has further been pleased to stay the impugned order of sentence passed by the learned Magistrate subject to payment of 60% of the cheque amount i.e. Rs.2,49,000/- to the complainant/opposite party no. 2 within one month from the date.
7. The petitioner states that the petitioner is facing financial difficulties and is in a severe financially stringent condition and not in a position to accumulate the said heavy amount, coupled with the fact that the petitioner has a good case and there is every chance of success in the said pending appeal, such condition of the stay order may be waived and/or modified to the extent of 20% as the minimum quantum prescribed in Section 148 of the Negotiable Instruments Act to enable the petitioner to pursue his said appeal for the ends of justice.
8. **Mr. Satadru Lahiri, learned counsel for the petitioner** has submitted that the impugned order is a gross abuse of the process of Court.
9. And that the impugned order passed by the said Sessions Judge is a patent illegality on the face of the record which the petitioner assailed at the time of hearing but the learned Court miserably failed to accept such contention put forward by the learned Advocate appearing for the petitioner and passed the impugned order and as such directing the petitioner to deposit to the tune of 60% instead of minimum prescription

of 20% as enshrined in Section 148 of the Negotiable Instruments Act is too harsh to the petitioner.

10. That the impugned order is otherwise bad in law and it is expedient in the interest of justice and to prevent the abuse of process of Court the said impugned order be quashed.
11. There is no representation on behalf of the opposite party.
12. On hearing the Learned Counsels for both sides, the orders under revision, the materials on record and the relevant provisions of law, Section 148 of the Negotiable Instruments Act is reproduced here.
13. **Section 148 N.I. Act, lays down:-**

“Section 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 percent 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 143-A.

(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.”

14. In **Surinder Singh Deswal @ COL. S.S. Deswal & Ors.**

vs. Virender Gandhi & Anr., Criminal Appeal Nos. 1936-1963

of 2019, on 8th January, 2020, the Supreme Court held that:-

“11. The appellants had challenged the order dated 01.12.2018 passed by the Additional Sessions Judge, Panchkula by which while entertaining the criminal appeal of the appellants, Appellate Court has suspended the substantive sentence of the appellants subject to deposit 25% of the compensation awarded by the trial court in favour of the complainant. The petitions under Section 482 Cr.P.C. filed by the appellants questioning the order dated 01.12.2019 were dismissed by the High Court vide its judgment dated 24.04.2019 against which judgment the appellants have also filed SLP(Criminal)Nos.4948-4975 of 2019) which were dismissed by this Court on 29.05.2019. All arguments raised by the appellants questioning the order dated 01.12.2018 have been elaborately dealt with by this Court and rejected. The submissions regarding challenge to the order dated 01.12.2018 of the learned Additional Sessions Judge which have been addressed before us have been considered by this Court and rejected. It is useful to refer paragraph 8., 8.1 and 9 of the judgment of this Court which are to the following effect:

“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 Code of Criminal Procedure 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 Code of Criminal Procedure, 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.

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.

9. 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 Code of Criminal Procedure 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. 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, the Parliament has thought it fit to amend Section 148 of the N.I. Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the N.I. Act and also Section 138 of the N.I. Act.”

12. This Court having already upheld the order of the Appellate Court dated 01.12.2018 suspending the sentence subject to deposit 25% of the amount of compensation any submission questioning the order of the Appellate Court directing the suspension of

sentence subject to deposit of 25% of the compensation amount needs no further consideration. By dismissal of the criminal appeals of the appellants on 29.05.2019 by this Court the challenge stands repelled and cannot be allowed to be reopened.

13. *The second round of litigation which was initiated by the appellant by filing application under Section 482 Cr.P.C. was against the order dated 20.07.2019 passed by the Additional Sessions Judge, Panchkula by which Additional Sessions Judge held that the appellant having not complied with the direction dated 01.12.2018 to deposit 25% of the amount of compensation, the order of suspension of sentence shall be deemed to have been vacated. The order dated 20.07.2019 was an order passed by the Additional Sessions Judge on account of failure of the appellant to deposit 25% of the amount of compensation. The suspension of sentence on 01.12.2018 was subject to the condition of deposit of 25% of the amount of compensation, when the condition for suspension of sentence was not complied with, learned Additional Sessions Judge was right in taking the view that order of suspension of sentence shall be deemed to have been vacated. Challenge to order dated 20.07.2019 has rightly been repelled by the High Court by its elaborate and well considered judgment dated 10.09.2019.*

14. *Learned counsel for the appellant has placed reliance on the judgment of this Court dated 30.07.2019 in **Criminal Appeal No.1160 of 2019 (G.J. Raja vs. Tejraj Surana)**. This Court in the above case was considering provisions of Section 143A of the N.I. Act which was inserted by the same Amendment Act 20 of 2018 by which Section 148 of the N.I. Act has been inserted. This Court took the view that Section 143A is prospective in nature and confined to cases where offences were committed after the introduction of Section 143A i.e. after 01.09.2018. In paragraph 22 of the judgment following has been held:*

“22. In our view, the applicability of Section 143A of the Act must, therefore, be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section

143A, in order to force an accused to pay such interim compensation.”

15. The judgment of this Court which was delivered in the case of the present appellants i.e. **Criminal Appeal Nos.917-944 of 2019 (Surinder Singh Deswal @ Col. S.S. Deswal and others vs. Virender Gandhi) (in which one of us M.R.Shah, J was also a member)** was also cited before the Bench deciding the case of **G.J. Raja**. This Court in its judgment dated 29.05.2019 has rejected the submission of the appellants that Section 148 of N.I. Act shall not be made applicable retrospectively. This Court held that considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, on purposive interpretation of 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.

16. The Bench deciding **G.J. Raja’s case** has noticed the judgment of this Court in the appellants’ case i.e. **Surinder Singh Deswal’s case** and has opined that the decision of this Court in **Surinder Singh Deswal’s case** was on Section 148 of the N.I. Act which is a stage after conviction of the accused and distinguishable from the stage in which the interim compensation was awarded under Section 143A of the N.I. Act. When the Bench deciding **G.J. Raja’s case(supra)** itself has considered and distinguished the judgment of this Court in appellants’ own case i.e. **Surinder Singh Deswal’s**, reliance by the learned counsel for the appellants on the judgment of this Court in **G.J. Raja’s case** is misplaced. It is useful to refer to paragraph 23 of the judgment in **G.J. Raja’s case** which is to the following effect:

“23. We must, however, advert to a decision of this Court in *Surinder Singh Deswal and Ors. v. Virender Gandhi* (2019) 8 SCALE 445 where Section 148 of the Act which was also introduced by the same Amendment

Act 20 of 2018 from 01.09.2018 was held by this Court to be retrospective in operation. As against Section 143A of the Act which applies at the trial stage that is even before the pronouncement of guilt or order of conviction, Section 148 of the Act applies at the appellate stage where the Accused is already found guilty of the offence Under Section 138 of the Act. It may be stated that there is no provision in Section 148 of the Act which is similar to Sub-Section (5) of Section 143A of the Act. However, as a matter of fact, no such provision akin to Sub-section (5) of Section 143A was required as Sections 421 and 357 of the Code, which apply post-conviction, are adequate to take care of such requirements. In that sense said Section 148 depends upon the existing machinery and principles already in existence and does not create any fresh disability of the nature similar to that created by Section 143A of the Act. Therefore, the decision of this Court in Surinder Singh Deswal (2007) 13 SCC 492 stands on a different footing.”

In view of the above, the judgment of this Court in the case of G.J. Raja does not help the appellants.

18. *The High Court is right in its opinion that question No.2 as framed in **Vivek Sahni’s case** was not correctly considered. When suspension of sentence by the trial court is granted on a condition, non-compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has*

been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.

***19.** It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.”*

15. Considering the materials on record the order being no. 4 dated 10.12.2019 passed by the Learned Additional District & Sessions Judge, 1st Court, Sealdah, South 24 Parganas in Criminal Appeal No. 17 of 2019 arising out of Complaint Case No. C/786 of 2011 under Section 138 of the Negotiable Instruments Act, 1881 **is modified to the extent, that the appellant/petitioner shall deposit 25% of the cheque amount instead of 60% as directed by the learned Additional District & Sessions Judge, 1st Court, Sealdah, South 24 Parganas, within 15 days from the date of this order.**
16. **The revisional application being CRR 70 of 2020 is accordingly allowed.**
17. The impugned order being no. 4 dated 10.12.2019 passed by the Learned Additional District & Sessions Judge, 1st Court, Sealdah, South 24 Parganas in Criminal Appeal No. 17 of 2019 arising out of Complaint Case No. C/786 of 2011 under Section 138 of the Negotiable Instruments Act, 1881 **is modified accordingly.**

18. **Case to proceed in accordance with law with an effort to settle the dispute through mediation (*In Re-expeditious Trial of Cases under Section 138 N.I. Act, 2022 LiveLaw (SC) 508*).**
19. No order as to costs.
20. All connected applications, if any, stands disposed of.
21. Interim order, if any, stands vacated.
22. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
23. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)