

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 631 of 2020

Sri Mithun Modak

Vs

Sri Deepak Kumar Sharma

For the Petitioner

: Mr. Amarta Ghose,
Mr. Siddhartha Paul,
Mr. Souryadeep Ghosh.

For the Opposite Party

: Mr. Mani Shankar Chaudhury.

Heard on

: 09.01.2023

Judgment on

: 31.01.2023

Shampa Dutt (Paul), J.:

The present revisional application has been referred praying for setting aside or modification of an order dated 24th December, 2019 passed by the Learned Additional District & Sessions Judge, Raghunathpur, Purulia in Criminal Appeal No. 09 of 2019 preferred by the accused/petitioner on being convicted by the learned Magistrate in Complaint Case No. 04 of 2013 under Section 138 of the Negotiable Instruments Act.

The petitioner's case is that on basis of a false complaint with completely forged documents the petitioner has been implicated as an accused in a case of dishonor of cheque amounting Rs. 3,30,000/- (Three lakhs and thirty thousand only) by the opposite party.

The petitioner pleaded not guilty to the commission of the alleged offence and faced the trial. But due to lack of proper legal guidance the petitioner was unable to defend himself in the aforesaid trial which was presided over by the Learned Additional Chief Judicial Magistrate, 2nd Court, Raghunathpur, Purulia. As a result the petitioner was convicted for the commission of offence punishable under Section 138 of the Negotiable Instruments Act and the petitioner was sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs. 5,00,000/- in default to further undergo simple imprisonment of one year.

The petitioner has been constrained to prefer an appeal against the order of conviction and sentence. The said appeal is pending before the court of the Learned Additional District & Sessions Judge, Raghunathpur, Purulia as Criminal Appeal No. 09 of 2019.

The opposite party filed a petition dated 25.09.2019 before the court of the Learned Additional District and Sessions Judge, Raghunathpur, Purulia praying for pass necessary direction upon the appellant to deposit 30% of the fine amount or compensation amount as awarded by the Learned Trial Court.

By an order dated 24.12.2019 the Learned Judge allowed the aforesaid petition dated 25.09.2019 filed by the opposite party, on contest by directing the petitioner to deposit 20% of the fine amount or the compensation amount as awarded by the Learned Trial Court by 19.02.2020 positively.

That due to financial constraints your petitioner has been unable to accumulate and deposit 20% of the fine/compensation amount within such a short span of time.

The petitioner believes that there is every chance of success in the appeal preferred by the petitioner before the Learned Court below on the basis of proper appreciation of the evidence, which has otherwise been overlooked by the Learned Trial Court while arriving at a conclusion of guilt against the petitioner.

The order dated 24.12.2019 passed by the Learned Additional District & Sessions Judge, Raghunathpur, Purulia is too harsh and against the principle of natural justice.

Mr. Amarta Ghose, Learned Advocate for the petitioner has submitted that the Learned Judge has failed to appreciate that there is every chance of success in the appeal preferred by the petitioner before the Learned Trial Court that on the basis of proper appreciation of the evidence, which has otherwise been overlooked by the Learned Trial Court while arriving at a conclusion of guilt against the petitioner.

The order dated 24.12.2019 passed by the Learned Additional District and Sessions Judge, Raghunathpur, Purulia is too harsh and against the principles of natural justice.

The Learned Judge has failed to appreciate that the Learned Trial court has erroneously overlooked the specific defence case as adduced by the petitioner while coming to a finding of guilt against the petitioner.

The Learned Trial Court has come to an order of conviction against the petitioner on the basis of vague surmises and conjectures.

The Learned Appellate Court has failed to appreciate that directing the petitioner to pay 20% of the fine /compensation amount and that too within a short period of time is not only harsh, the same has also put the petitioner into acute financial hardships.

That the impugned order dated 24.12.2019 passed by the Learned Additional District & Sessions Judge, Raghunathpur, Purulia in Criminal Appeal No. 09 of 2019 is contrary to the principles of natural justice and thus the same should be set aside and/or modified.

Mr. Manish Shankar Chaudhary learned Counsel for the opposite party has submitted that the order under revision has been passed in accordance with law. And as such the present revision is liable to be dismissed.

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.

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.”

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.”*

In view of the observations above, there is no irregularity in the order/judgment under revision and the same being in accordance with law in hereby affirmed. The order impugned does not deserve interference by this Court in its inherent jurisdiction.

Accordingly, CRR 631 of 2020 stands dismissed.

All connected Application stand disposed of.

Interim order if any stands vacated.

There will be no order as to costs.

A copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)