

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2925 OF 2023

Gulshan Pindidas MehraPetitioner
Versus
State of Maharashtra and another Respondents

Mr. P.K. Sangharajka, Advocate a/w. P.V. Chaudhari, Umar Dalvi i/b. Harsh Ramchandani, for the Petitioner.

Mr. Arfan Sait, APP for the Respondent-State.

Mr. Pradyumna D. Sharma, Advocate a/w. Dujendrakumar H. Sharma, Randhirkumar N. Mandal, Bhavika S. Hodar, Sandeep J. Pawar, Baliram A. Sawant, for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th AUGUST, 2023

P.C. :

1. This is a Petition preferred by the Petitioner for setting aside the order dated 6.5.2023 passed below Exhibit-3 in Appeal No.170/2023 by the Additional Sessions Judge, Dindoshi, Mumbai. By the impugned order, the execution of the sentence imposed on the Petitioner in C.C. No.1878/SS/

2015 before the Metropolitan Magistrate, 48th Court, Andheri, Mumbai was suspended till the next date on the condition of depositing 20% amount of compensation within 60 days from 6.5.2023. The period to deposit the amount was extended subsequently till 7.8.2023 vide order dated 3.7.2023. The Petitioner was convicted by the aforementioned learned Magistrate in trial under Section 138 of the Negotiable Instruments Act (for short, 'N.I. Act') and he was sentenced to suffer SI for one year and to pay compensation of Rs.40 Lakhs with simple interest on the cheque amount @ 9% per annum payable from the date of issuance of cheque till actual payment. This order is challenged by the Petitioner in Criminal Appeal No.170/2023 before the Additional Sessions Judge at Dindoshi. That Appeal is pending. During pendency of that appeal, learned Additional Sessions Judge passed an order taking recourse to Section 148 of the N.I. Act directing him to pay 20% amount of the compensation as mentioned earlier. Said order is challenged in this Petition.

2. Learned counsel for the Petitioner states that the Petitioner has an excellent case on merits. Legally enforceable liability is not made out. The evidence is not appreciated properly.

3. Learned counsel for the Respondent opposed these submissions. According to him, the points of merits will be considered by the Appellate Court when the Appeal is finally heard. At this stage, there is a mandatory provision under Section 148 of the N.I. Act whereby the convicted accused under Section 138 of the N.I. Act is required to pay the amount of 20% of the compensation. He relied on the judgments of the Hon'ble Supreme Court in the case of (i) **Surinder Singh Deswal @ Col.S.S. Deswal and others Vs. Virender Gandhi¹** and (ii) **Surinder Singh Deswal @ Col. S.S. Deswal & Ors. Vs. Virender Gandhi & Anr.²** in support of his contention. He submitted that learned trial Judge has already shown leniency to the Petitioner and considering pendency of the appeal learned Appellate Judge could have

1 2019 AIR (Supreme Court) 2956

2 2020 AIR (Supreme Court) 415

directed the Petitioner to pay more than 20% of the compensation amount.

4. I have considered these submissions. The submissions on merits of the matter will have to be considered by the Appellate Court when the Appeal is finally heard. Section 148 of the N.I. Act is enacted with some purpose. The Hon'ble Supreme Court in both these aforementioned judgments has discussed the necessity and scope of the said Section. In the judgment dated 29.5.2019 in the aforementioned Surinder Deswal's case the Hon'ble Supreme Court has held that if the 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. The N.I. Act has been amended from time to time to provide speedy disposal of cases relating to the offence of the dishonoured of cheques. It was observed 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 dishonored cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque. 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. The Hon'ble Supreme Court had upheld the order of the Appellate Court in that case directing the Appellant in that case to deposit 25% of the amount of compensation.

5. Thus, considering the ratio of the Hon'ble Supreme Court in both these cases, referred to hereinabove, the order passed by the learned Appellate Judge cannot be interfered with. The Petitioner had to deposit the amount of 20% of the compensation amount as directed by learned Additional Session Judge in connection with said Criminal

Appeal. Hence in view of this discussion, the prayer made in this Petition cannot be granted. The Petition is accordingly dismissed. However, in the interest of justice the hearing of the appeal is expedited.

(SARANG V. KOTWAL, J.)

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