115 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-1942-2023
Decided on : 28.02.2023

Bhupinder Singh ...... Petitioner

Versus

The Fazilka Central Cooperative Bank Ltd. and another ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. K.S.Brar, Advocate
for the petitioner.

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Manjari Nehru Kaul, J.(Oral)

Petitioner is seeking quashing of order dated 26.10.2022 (Annexure P-2) passed by the learned Additional Sessions Judge, Fazilka in Criminal Appeal No.266 of 2022 titled as 'Bhupinder Singh vs. F.C.C. Bank Ltd.' whereby he was directed to deposit 20% of the compensation amount within a period of two months from the date of order passed by the Lower Appellate Court.

Learned counsel for the petitioner submits that the impugned order deserves to be set aside as it reflected an arbitrary exercise of judicial discretion and the direction to deposit an amount to the extent of 20% of the compensation amount was against the settled law. Learned counsel further submits that no such arbitrary constraints could be imposed on the rights and personal liberty of a person. A prayer is therefore, made to quash the said condition or in the alternative not to disburse the said amount to respondent Bank during the pendency of the appeal.

I have heard learned counsel and perused the relevant material on record.

This Court does not find any merit in the submissions made by learned counsel for the petitioner.

Hon'ble the Supreme Court in **'Surinder Singh Deswal @ Col. S.S. Deswal & others vs. Virender Gandhi' 2019 (3) RCR (Criminal) 186**, while dealing with similar controversy, has held as under:

> *"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 Cr.P.C., 1973 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."*

In view of the above, there could be no manner of doubt that the impugned order does not suffer from any error and has been passed as per the provisions of Section 148 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act'). This Court is therefore, not inclined to stay the disbursement of the interim compensation, as prayed for, during the pendency of the appeal, as it would defeat the very purpose behind the enactment of Section 148 of the Act.

As an offshoot to the above, the instant petition being devoid of any merit stands dismissed.

At this stage, learned counsel for the petitioner has prayed for granting some time to the petitioner to deposit 20% of the compensation amount, as he would have to arrange for the money.

In view of the prayer made, an additional period of 30 days for compliance of the impugned order is granted to the petitioner. It is made clear that in case the petitioner fails to deposit the amount of compensation as directed vide the impugned order, this order shall be of no avail to him after expiry of the above stipulated additional period of 30 days.

28.02.2023 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

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