

105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-179-2023
Decided on : 18.01.2023

Deepak Kumar

..... Petitioner

Versus

Rajwinder Singh

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kuldip Singh, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Petitioner is seeking quashing of impugned order dated 20.12.2022 passed by Addl. Sessions Judge, Fazilka in CRA No.5165 of 2022 against the order of conviction dated 02.12.2022 passed by the trial Court in complaint case No.NACT/1089/2017 registered under Section 138 of Negotiable Instruments Act (hereinafter referred to as “N.I. Act”).

Learned counsel for the petitioner submits that the impugned order, which had been passed by the Court below on the face of it, reflected an arbitrary exercise of judicial discretion. Learned counsel further submits that the learned Appellate Court erred in directing the petitioner to deposit an amount to the extent of 20% of the compensation amount while suspending his sentence as no arbitrary constraints could be imposed on the rights of the personal liberty of a person. While inviting the attention of this Court to the impugned order, learned counsel submits that the condition imposed by the learned Appellate Court on the face of it was onerous since

the petitioner did not have the financial means to deposit 20% of the compensation amount. Learned counsel, therefore, made a prayer to quash the said condition or in the alternative to modify the condition by directing the petitioner to pay a reasonable amount of compensation.

Heard learned counsel and perused the relevant material on record.

This Court finds no merit in the submissions made by learned counsel for the petitioner. Hon'ble Supreme Court in ***Surinder Singh Deswal @ Col. S.S.Deswal and others vs. Virender Gandhi, 2019(3) RCR (Crl.) 186*** while dealing with the 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 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 realize 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 observations of Hon'ble Supreme Court, it is clear that the impugned order has been passed in accordance with the provisions of Section 148 of N.I. Act and hence, it cannot, by any stretch of imagination, be termed as being illegal or an arbitrary exercise of judicial discretion as has been vehemently urged by the learned counsel for the petitioner.

Qua the alternative prayer for reducing the amount payable from 20% to some reasonable amount, it would be relevant to refer to the provisions of Section 148 of N.I. Act, which provides that the Appellate Court may order the accused to deposit such sum, which shall be minimum of 20% of the fine or compensation awarded by the trial Court. Therefore, in the circumstances, this Court cannot go beyond the statutory provisions of Section 148 of N.I. Act and scale down the amount payable by the petitioner.

The present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

18.01.2023
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Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No