

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-2878-2023

Date of Decision : 30.01.2023

M/s Umam Automobiles and another

.... Petitioners

Versus

M/s Indo Farm Equipment Ltd.

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Munish Bhardwaj, Advocate for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of impugned order dated 25.11.2022 (**Annexures P-6**) passed by learned Additional Sessions Judge, Chandigarh, in *Criminal Appeal No.317/2022* titled as '*M/s Umam Automobiles and another Vs. M/s Indo Farm Equipment Ltd.*' whereby while suspending the sentence of the petitioner No.2, he was directed to deposit 20% of the compensation amount awarded by the trial Court within a period of 60 days.

Brief facts of the case are that petitioner No.1 is a partnership firm having petitioner No.2 as its partner. In order to discharge their legal liability, petitioner No.2 issued a cheque bearing No.899854 dated 01.11.2009 amounting to Rs.1,40,00,000/- in favour of the respondent and when the said cheque was presented by the respondent, the same were dishonoured with remarks '*payment stopped by the drawer*' vide memo dated 04.12.2009. Thereafter, the respondent issued a legal notice dated 30.12.2009 to the petitioners but despite that

the petitioners have failed to make the payment. Hence, respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') against the petitioners.

Vide judgment of conviction and order of sentence dated 28.10.2022, petitioner No.2 was held guilty for commission of offence punishable under Section 138 of the N.I. Act and sentenced to undergo rigorous imprisonment for a period of 02 year and to pay a compensation of Rs.1,40,00,000/- to the respondent/complainant in terms of Section 357(3) of the Cr.P.C. within 02 months and in default of payment of compensation to further undergo simple imprisonment for 02 months.

Being aggrieved against the aforesaid judgment of conviction and order of sentence, the petitioners have preferred an appeal along with the application under Section 389 Cr.P.C. for suspension of sentence during the pendency of the appeal. The application under Section 389 of the Cr.P.C. filed by the petitioners was allowed vide impugned order dated 25.11.2022 passed by learned Additional Sessions Judge, Faridabad and petitioner No.2 was directed to deposit 20% of total compensation amount awarded by the trial Court within 60 days.

Aggrieved by the said order, the petitioner has filed the present petition.

Learned counsel for the petitioners has submitted that the impugned order dated 25.11.2022 is illegal. The petitioners have been falsely implicated in the present case. There is no legally enforceable debt against the petitioners and cheque in question was issued as security which has handed over to the employee of the respondent-company as a

condition for grant of distributorship. A perusal of provision 148 of the N.I. Act clearly shows that learned Appellate Court may order the appellant to deposit such amount which shall not be less than 20% of the fine or compensation. The words used is 'may' which means that in the facts and circumstances of the case, when the appellant has good prima facie case on merit the learned Appellate Court should not direct for the payment of 20% of the amount of fine or compensation. Petitioner No.2 will suffer irreparable loss if the impugned order is not set aside. Therefore, the impugned order may be set aside.

I have heard learned counsel for the petitioner and perused the paper-book.

For ready reference, Section 148 and 143-A of the N.I. Act are reproduced here-in-below:-

"148. Power of Appellate Court to order payment pending appeal against conviction.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 per cent 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 143A.

(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."

Section 143-A of the N.I. Act:-

"143-A. Power to direct interim compensation. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant -

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, 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 case being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section."

The contentions raised by learned counsel for the petitioner, has already been considered in detail and decided by a Co-ordinate Bench of this Court in ***M/s Ginni Garments and another vs. M/s Sethi Garments and another : 2019 (2) R.C.R. (Criminal) 833***, wherein, it has

been held that the procedure for recovery of fine or compensation from appellant in pending appeal already existed in Cr.P.C even before adding Section 148 of the Act. Therefore, no new aspect of coercive recovery of fine or compensation from the appellant is being freshly created through this amended provision. This judgment stands upheld by the Hon'ble Apex Court in *Surinder Singh Deswal @ Col. S.S. Deswal & Ors. Vs. Virender Gandhi & Anr : 2020 (1) R.C.R. (Criminal) 604*.

Therefore, in view of the aforesaid judgments rendered in *M/s Ginni Garments* and *Surinder Singh Deswal's cases (supra)*, the present petition is hereby dismissed and impugned order dated 25.11.2022 (**Annexures P-6**) passed by learned Additional Sessions Judge, Faridabad is upheld.

30.01.2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No