

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

203

CRM-M-2889-2022

Date of Decision:08.08.2023

Gurjant Singh

...Petitioner

Versus

Jarnail Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sikandh Mehta, Advocate for
Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Anil Kumar Garg, Advocate
for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner/accused has filed the present petition with a prayer to set-aside the order dated 02.12.2021 (Annexure P-5) passed by the learned Additional Sessions Judge, Sangrur in CRA No. 148 dated 07.03.2017 titled as “**Gurjant Singh Vs. Jarnail Singh**”, whereby, the petitioner was directed to deposit 20% of the double cheque amount to the respondent/complainant.

2. Learned counsel for the petitioner submits that vide judgment and order dated 13.02.2017 passed by the Court of learned SDJM, Malerkotla, the petitioner was held guilty for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter to be referred as '**the Act**') and was sentenced to undergo simple imprisonment for a period of six months and was also directed to pay compensation to the respondent/complainant equal to the

amount of cheque in question. Challenging the impugned judgment and order passed by the learned SDJM Malerkotla, the present petitioner filed an appeal before the Court of learned Sessions Judge, Sangrur. Vide order dated 02.12.2021, the Court of learned Additional Sessions Judge, Sangrur, directed the petitioner (appellant before the appellate Court) to deposit 20% of double cheque amount to the present respondent/complainant.

3. I have heard learned counsel for the parties and perused the record.

4. The Legislature had inserted Section 148 of the Act, whereby, powers were conferred on the appellate Court to order payment, pending appeal against conviction and the same has been reproduced below:-

2[Section 148: Power of Appellate Court to order payment pending appeal against conviction.

148. (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 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].

5. From the above referred provisions of law, it is abundantly clear that the appellate Court may order deposit of such sum which shall be minimum of 20% of the fine or compensation awarded by the learned trial Court. Here in the present case, the petitioner was directed to pay compensation to the respondent/complainant equal to the amount of cheque in question. Consequently, the appellate Court could have awarded 20% of the fine or compensation and not the 20% of double cheque amount to the respondent/complainant. Even, the learned counsel appearing on behalf of respondent/complainant fairly concedes that the word “double” seems to be inadvertent typographical error and he has no objection, in case the said word is ordered to be removed from the impugned order.

6. From the above, the impugned order dated 02.12.2021 (Annexure P-5) is modified to the extent that the present petitioner (appellant before the appellate Court) is directed to deposit 20% of the cheque amount to the respondent/complainant within a period of four weeks from today.

7. In view of the above discussion, the impugned order dated 02.12.2021 (Annexure P-5) is modified to the extent as mentioned above.

8. Disposed off.

08.08.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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