

207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5123-2020 (O&M)

Reserved on: 27.03.2023

Pronounced on:20.04.2023

Dharamvir Singh Rawat

...Petitioner.

Vs.

Raj Kishor and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. M.K. Pundir, Advocate,
for the petitioner.

Mr. Jagbir Singh, Advocate,
for respondent No.1.

HARKESH MANUJA, J.

By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of order dated 17.09.2019 passed by Id. Addl. Sesssion Judge Yamuna Nagar at Jagadhari, vide which bail of the petitioner has been cancelled and further the 20% amount of the compensation awarded by the Id. Trial Court has been ordered to be recovered from the petitioner under Section 421 of Cr.P.C.

Brief facts of the case are that vide judgment of conviction dated 07.06.2017 and order of sentence dated 08.06.2017, the Id. Trial Court/Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri convicted and sentenced the petitioner for a period of one year for the commission of offence punishable under Section 138 of the Negotiable Instruments Act and

further, directed him to pay compensation to the tune of Rs. 2,00,000/-, to the respondent/complainant. Being aggrieved, petitioner preferred an appeal before the court of Id. Sessions Judge, Yamuna Nagar at Jagadhri, within time limitation on 04.07.2017 and the Id. Addl. Sessions Judge, Jagadhri after appreciating the submissions, suspended the sentence by admitting the petitioner on bail, vide order dated 06.07.2017.

It would be appropriate to mention here that vide notification dated 02.08.2018, the Central Government has amended the Negotiable Instruments Act by inserting Section 143-A and Section 148 in the Principal Act i.e. Negotiable Instruments Act 1881, vide which the Ld. Trial Court as well as Ld. Appellate Court are empowered to direct the accused to make interim compensation/ payment to the complainant, upon filing of complaint or appeal against the conviction. In view of this amendment, vide order dated 17.09.2019, Ld. Addl. Sessions Judge, Yamuna Nagar at Jagadhri, ordered to recover the 20% amount of the compensation awarded by the Ld. Trial Court.

By way of present petition, petitioner has challenged the order dated 07.09.2019 passed by the Ld. Additional Sessions Judge, Yamuna Nagar at Jagadhri, whereby the petitioner has been ordered to recover the 20% amount of the compensation awarded by the Ld. Trial Court in view of Section 148 of the Negotiable Instruments (Amendment) Act, 2018.

Ld. counsel for the petitioner contends that Amended Act or amendment cannot be made applicable upon the pending appeal of the petitioner as it has been filed and entertained by the Ld. Additional Sessions Judge before the amendment was notified and came into force. He further

contends that it is a settled law that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation, meaning thereby until or unless an enactment or amendment is given retrospective operation, such amendment always has prospective effect. It is submitted that undisputedly, there is nothing mentioned in the Amended Act, 2018 about having its effect or applicability retrospectively, hence, the impugned order being against the settled proposition of law, is liable to be set aside.

On the other hand, learned counsel for the complainant/respondent No.2 argues that this Court in the case of “**M/s Ginni Garments and another Versus M/s Sethi Garments and another, 2019(2) RCR (Criminal) 833**”, held that amendment with respect to Section 148 of the NI Act is procedural only and hence it would apply to pending cases as well. He further submits that even Hon’ble Apex Court in “**Surinder Singh Deswal @ Col. S.S. Deswal and others**” in Criminal Appeal Nos 917-994 of 2019 decided on 29.05.2019 held that considering the object and purpose of amendment in Section 148 of the N.I. Act, the same shall be applicable in pending appeals as well.

I have heard learned counsel for the parties and gone through the paper book and I am unable to find any substance in the arguments raised by the learned counsel for the petitioner. This Court in **Ginni’s case** (supra) comprehensively discussed and decided that amendment in Section 148 of the N.I. Act is merely procedural and thus would apply in all cases where the appeal is still pending. Observations of the Hon’ble Court in this case are reproduced hereinunder:

“In view of the above discussion, it is quite clear that the procedure of recovery of fine or compensation from a convict appellant of pending appeal already existed in CR.P.C; before advent of the provision as contained in Section 148 of the Act. Hence, no new aspect of coercive recovery of fine or compensation from the appellant is being created through this amended provision. On the contrary, this provision provides more breathing space to the convict/appellant; as compared to the other procedures of recovery, as contemplated under Sections 421 and 424 of Cr.P.C, 1973 which is for more onerous in terms of time limit and the consequences. Since the provisions for recovery of fine or compensation from the appellant/convict already existed in the existing procedure relating to the recovery, therefore, the provision introduced vide Section 148 of the Act; which relates only to recovery of amount partly, as interim measure, has to be treated purely procedural only, which is otherwise also beneficial for the appellant as compared to the pre-existing provisions. Hence it has to be held that provision of Section 148 of the Act shall govern all the appeals pending on date of enforcement of this provision or filed thereafter.”

Similar was the opinion of Hon’ble Apex Court in Surinder’s case (supra) as well where it held herein as under:

“Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this

Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.”

In view of the case laws cited above, there remains no doubt that amendment to Section 148 of the N.I. Act is merely procedural and hence its application would be retrospective in nature and would apply to all pending appeals as well. Learned counsel for the petitioner has tried to create a differentiation by submitting that in his case even the appeal has been filed and entertained before this amendment came into picture. However, once it is held that amendment is procedural in nature and retrospective in its application, stage of proceedings would not make much difference as the appeal being continuation of trial only.

In view of the discussion held above, this petition is dismissed.

Pending miscellaneous application(s), if any, shall also stand disposed of.

20.04.2023
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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned:

Yes/No

whether reportable:

Yes/No