

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8955-2023
Decided on : 22.02.2023

Savita

..... Petitioner

Versus

UT, Chandigarh and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Parveen Kumar Garg, Advocate
for the petitioner.

Mr. Amit Kumar Goyal, APP, UT, Chandigarh.

Manjari Nehru Kaul, J.(Oral)

The petitioner is seeking quashing of the order dated 25.11.2022 (Annexure P-4) passed by Addl. Sessions Judge, Chandigarh whereby the petitioner was directed to deposit 20% of the compensation amount.

Learned counsel for the petitioner *inter alia* contends that the impugned order has been passed by the Appellate Court without application of judicial mind and reflects an arbitrary exercise of judicial discretion. Learned counsel submits that the directions to pay 20% of the compensation amount while suspending the sentence of the petitioner was against the settled law as no such arbitrary constraints could be imposed on the rights of personal liberty of a person. It has lastly been submitted that the condition imposed was onerous as the petitioner did not have the means to deposit 20% of the compensation amount. It is, therefore, prayed that the said

condition be either quashed or in the alternative direction be issued not to disburse the said amount to respondent No.2 during the pendency of appeal.

Heard learned counsel for the parties and perused the relevant material available on record.

This Court finds no 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, observed 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 observations of the Hon’ble Supreme Court, there can be no manner of doubt that the impugned order does not suffer from any error and has been passed as per provisions of section 148 of the Negotiable Instruments Act, 1881. This Court is also not inclined to stay the disbursement of the interim compensation during the pendency of the appeal as it would defeat the very purpose behind enactment of Section 148 of the Act.

As a sequel to the above, there being no merit in the instant petition, the same stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

22.02.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No