121

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9611-2023
Date of decision : 23.02.2023

RAM KISHAN @ RAJ KISHAN

…Petitioner

Versus

STATE OF HARYANA AND ANOTHER

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Aditya Jain, Advocate
for the petitioner.

HARSH BUNGER, J.

The petitioner has filed the present petition under section 482 of Code of Criminal Procedure, *inter-alia*, seeking quashing of impugned order dated 06.01.2023 (Annexure P-8) passed by learned Additional Sessions Judge, Kurukshetra in ***CRA-5-2023*** titled as ***Ram Kishanvs District Food, Civil Supplies and Consumer Affairs and another***, to the extent of directing the petitioner (appellant-convict in CRA-5-2023) to deposit 20% of the compensation amount awarded by the trial Court, within 60 days from the date of order in view of Section 148 of the Negotiable Instruments (Amendment) Act, 2018 (for short `***N.I Act'***) (as amended up-to-date).

Brief facts of the case are that respondent No.2-complainant filed a complaint under Section 138 of the N.I Act, by stating that District Food and Supply Controller allotted 102501.00 qtls. of paddy to the petitioner / petitioner's proprietorship concern (M/s Hansji Exports, Pehowa, District Kurukshetra) for custom milled rice for the year 2015-16 as per policy and guidelines issued by the Government of India/Haryana from time to time. It is submitted that for milling the rice, an agreement was executed between complainant/respondent No.2 and petitioner (who is the sole proprietor of M/s Hansji Exports Pehowa), whereby certain terms and conditions were imposed and were duly signed by the petitioner on behalf of his proprietorship concern i.e. M/s Hansji Exports Pehowa. The petitioner was bound to deliver 100% custom milled rice to Department / Food Corporation of India upto 31.03.2016 (which was further extended upto 31.08.2016), however the petitioner failed to do so, accordingly, he was liable to pay price of rice which was not delivered by them and penalty as per CCL pattern i.e. a total sum of Rs.11,35,50,656/- to the complainant. It is further stated in the complaint that in order to discharge his liability towards the complainant to make part payment against the outstanding amount, the petitioner being sole proprietor of M/s Hansji Exports Pehowa, issued two separate Cheques bearing Nos.915987 and 915986, both dated 10.08.2017, amounting to Rs.50 lakhs each, respectively, drawn at `ICICI Bank'. However, when the said cheques were presented, the same were dishonoured with the remarks "*Funds insufficient*" and were returned vide memos dated 14.08.2017. It appears that thereafter, a legal notice dated 29.08.2017 was served upon the accused (petitioner) demanding the payment within 15 days from the date of receipt of said notice but that too of no avail. Accordingly, complaint under Section 138 of the N.I Act was filed.

The Judicial Magistrate Ist Class, Kurukshetra, after appreciating the evidence on record, convicted the present petitioner vide judgment dated 07.12.2022 and further passed order of sentence vide order dated 09.12.2022 (Annexure P-6), whereby petitioner was sentenced to undergo simple imprisonment for a period of two years and further to pay the compensation to the tune of double of the amount of impugned cheques within three months from the date of passing of said judgment and in default thereof, he was further ordered to undergo simple imprisonment for six months.

The petitioner challenged the aforesaid judgment of conviction and order of sentence by filing an appeal before the Court of Sessions Judge, Kurukshetra, which came to be registered as CRA-5-2023. Along with the appeal; the petitioner also filed an application for suspension of sentence.

Learned Additional Sessions Judge, Kurukshetra, vide order dated 06.01.2023, suspended the sentence of the petitioner by observing as under:-

> *"However, in view of Section 148 of the Negotiable Instruments (Amendment) Act, 2018, the appellant is directed to deposit 20% amount of the compensation awarded by the learned trial Court and the said amount is ordered to be deposited in the learned trial court within 60 days from today. The trial court is further directed to release the aforesaid amount deposited by the appellant to the complainant on his application. The trial court is also required to send the due intimation regarding deposit of the said amount by the appellant/accused and about the release of the same to the complainant, to this court. <u>It is made clear that the condition qua the payment of interim compensation as ordered above shall be treated as a condition qua suspension of sentence of the appellant-convict and in case of non compliance by the appellant-convict, the order regarding suspension of sentence shall be cancelled</u>."*

The present petition has been filed challenging the order dated 06.01.2023 (Annexure P-8) passed by learned Additional Sessions Judge, Kurukshetra to the extent whereby the bail under Section 389 of the Code of

Criminal Procedure granted to the petitioner has been made subject to condition of deposit of 20% of compensation amount awarded by trial Court.

Learned counsel for the petitioner submits that the suspension of sentence granted by the lower Appellate Court could not have been made subject to deposit of 20% of the compensation amount awarded by the trial Court as the provisions contained in Section 148 of the Negotiable Instruments Act, are only directory and not mandatory.

Learned counsel for the petitioner has further referred to various documents attached with the petition and contended that though the complainant has failed to prove its case before the concerned trial Court, the present petitioner-accused has been wrongly convicted by the Trial Court without considering the fact that there was tampering and material alteration in the cheques in question and in view of section 87 of Negotiable Instruments Act, the said cheques were void and he relies upon the judgment rendered by Delhi High Court in ***BPDL Investments (Pvt.) Ltd. v. Maple Leaf Trading International (Pvt.) Ltd., 2006(7) RCR (Criminal) 54*** to contend that the petitioner is having a very good case on merits and therefore, he urged that the impugned order passed by the Lower Appellate Court to the extent whereby the petitioner is directed to deposit 20% of compensation amount awarded by trial Court, be quashed and set aside.

I have heard learned counsel for the petitioner and have perused the paper book as well as impugned order dated 06.01.2023 (Annexure P-8) passed by the learned Additional Sessions Judge, Kurukshetra.

Section 148 of the N.I. Act, 1881 reads as under :-

> ***[148. Power of Appellate Court to order payment pending appeal against conviction.***-*(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 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.]

The aforesaid provision has been considered and stands settled by an authoritative judgment passed by Hon'ble the Apex Court in ***Surinder Singh Deswal @ Col. S.S. Deswal v. Virender Gandhi AIR 2019 Supreme Court 2956***, the relevant paragraphs are quoted below :-

"7. We have heard the learned counsel for the respective parties at length.

7.1 The short question which is posed for consideration before this Court is, whether the first appellate court is justified in directing the appellants - original accused who have been convicted for the offence under section 138 of the N.I. Act to *deposit 25% of the amount of compensation/fine imposed by the learned trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under section 389 of the Cr.P.C., 1973 considering section 148 of the N.I. Act as amended?*

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8. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which Section 148 of the N.I. Act came to be amended and therefore amended Section 148 of the N.I. Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under Section 138 of the N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I. Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in Section 148 of the N.I. Act and while suspending the sentence in exercise of powers under Section 389 of the Cr.P.C., when the first appellate court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the N.I. Act.

8.1 Having observed and found that because of the delay tactics of unscrupulous drawers of dishonouredcheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under

Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused - appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused - appellant has been taken away and/or affected. 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 GarikapattiVeeraya (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.

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. 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 dishonouredcheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonouredcheque 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 Sec 138 of the N.I. Act.*

10. Now so far as the submission on behalf of the appellants, relying upon Section 357(2) of the Cr.P.C. that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in the case of Dilip S. Dhanukar (supra) is concerned, the aforesaid has no substance. The opening word of amended Section 148 of the N.I. Act is that "notwithstanding anything contained in the Code of Criminal Procedure.....". Therefore irrespective of the provisions of Section 357(2) of the Cr.P.C., pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court."

From perusal of the above referred judgment in ***Surinder Singh Deswal's*** case (*supra*), it is observed that the applicability of the provision under Section 148 of the N.I Act, 1881 is mandatory. Further, Section 148 of the N.I. Act, 1881 envisages deposit of minimum 20% amount and Section 148 of the N.I. Act, 1881 starts with a non obstante clause.

Further, Hon’ble the Apex Court in the second round of litigation, in the above referred ***Surinder Singh Deswal’s*** case (supra) further considered the issue, where the suspension of sentence was subject to the condition of deposit of 25% of the amount of compensation and when the condition for suspension of sentence was not complied with, the concerned Additional Sessions Judge, had taken the view that the order of suspension of sentence shall be deemed to have been vacated and the High Court had upheld the view of learned Additional Sessions Judge. Accordingly, the Hon’ble Apex Court in ***Surinder Singh Deswal @ Col. S.S. Deswal&Ors.vsVirender Gandhi &Anr. 2020(1) R.C.R. (Criminal) 604,*** held as under :-

> *“13. The second round of litigation which was initiated by the appellant by filing application under Section 482 Cr.P.C., 1973 was against the order dated 20.07.2019 passed by the Additional Sessions Judge, Panchkula by which Additional Sessions Judge held that the appellant having not complied with the direction dated 01.12.2018 to deposit 25% of the amount of compensation, the order of suspension of sentence shall be deemed to have been vacated. The order dated 20.07.2019 was an order passed by the Additional Sessions Judge on account of failure of the appellant to deposit 25% of the amount of compensation. The suspension of sentence on 01.12.2018 was subject to the condition of deposit of 25% of the amount of compensation, when the condition for suspension of sentence was not complied with, learned Additional Sessions Judge was right in taking the view that order of suspension of sentence shall be deemed to have been vacated. Challenge to order dated 20.07.2019 has rightly been repelled by the High Court by its*

elaborate and well considered judgment dated 10.09.2019.

18. … When suspension of sentence by the trial court is granted on a condition, non compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.

19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated."

Further, in somewhat similar circumstances, a Co-ordinate Bench of this Court in ***Harwinder Singh vsMohanLal 2022(1) R.C.R. (Criminal) 136***, framed the following question :-

7. xxx xxx

Q. Whether while suspending the sentence of the applicant/convict, the Appellate Court in an appeal against conviction under section 138 of the N.I. Act, can impose a condition that on non-deposit of minimum of twenty percent of the fine/compensation awarded by the trial court, as ordered by the Appellate court while exercising its powers under section 148 of the NI Act, the benefit of *suspension of sentence would be liable to be automatically/consequently vacated?*

After discussing the law on Section 148 of the N.I. Act, 1881, it was held in para No.19 of ***Harwinder Singh's*** *case (supra)* as under :-

> "*19. That the Appellate Court in an appeal against conviction under Section 138 of the N.I Act, while suspending the sentence of the Appellant/Convict, has the power to impose a condition that on non-deposit of the fine/compensation, the benefit of suspension of sentence would be liable to be automatically/consequently vacated.*"

As regards the submission of the counsel for the petitioner that the petitioner has been wrongly convicted by the Trial Court without considering the fact that on account of tampering and material alteration in the cheques in question, the same were void in view of section 87 of Negotiable Instruments Act; this Court is of the view that it is not open for this Court to examine the case of the petitioner on merits and to give prima-facie finding that the petitioner has been wrongly convicted by the concerned trial Court and more particularly, when the appeal filed by the petitioner is still pending before the appellate Court. Thus, the aforesaid decision by Delhi High Court in ***BPDL Investments (Pvt.) Ltd. v. Maple Leaf Trading International (Pvt.) Ltd., 2006(7) RCR (Criminal) 54***, which has been rendered in the particular facts of that case, would not render any assistance to the present petitioner and more particularly, when this Court is considering the validity of the order passed by the appellate Court under section 148 of the N.I. Act.

No other point has been urged.

In view of the aforementioned facts and circumstances, this Court does not see any reason to interfere with the impugned order dated

06.01.2023 (Annexure P-8) passed by the learned Additional Sessions Judge, Kurukshetra. There is no illegality or perversity in the order dated 06.01.2023 (Annexure P-8) and the present petition being devoid of any merit, is hereby dismissed.

February 23, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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