

248/249

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

Date of Decision: 15.03.2023

CRM-M-8646-2019

(I) DHEERAJ MIDHA

..... PETITIONER

VS

M/S S.K.WOOLTEX

..... RESPONDENT

CRM-M-8713-2019

(II) DHEERAJ MIDHA

..... PETITIONER

VS

M/S S.K.WOOLTEX

..... RESPONDENT

CRM-M-8668-2019

(III) DHEERAJ MIDHA

..... PETITIONER

VS

M/S S.K.WOOLTEX

..... RESPONDENT

CRM-M-9774-2019

(IV) DHEERAJ MIDHA

..... PETITIONER

VS

M/S S.K.WOOLTEX

..... RESPONDENT

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sandeep Verma, Advocate for the petitioner(s).

Mr. Divyam Singh, Advocate for the respondents.

MANJARI NEHRU KAUL, J. (ORAL)

This order shall dispose of CRM-M-8646-2019, CRM-M-8713-2019, CRM-M-8668-2019 and CRM-M-8774-2019 as the parties are same and the issues involved therein are identical.

The petitioner is seeking setting aside of order dated 29.01.2019 (Annexure P-1) passed by learned Sessions Judge, Karnal in CRA-92-2018, CRA-93-2018, CRA-94-2018 and CRA-97-2018 whereby he was directed to deposit an amount of Rs.2,00,000/- under Section 148 of the Negotiable Instruments Act on or before 01.03.2019.

Learned counsel for the petitioner *inter alia* submits that the impugned order, which has been passed by the Court below, was an arbitrary exercise of judicial discretion and the learned Appellate Court had gravely erred in directing the petitioner to deposit an amount to the extent of 20% of the compensation amount. Learned counsel submits that no such arbitrary constraints could have been imposed on the rights of the personal liberty of a person and hence, the impugned order(s) deserved to be set aside. It has also been submitted that the petitioner was financially incapable of depositing 20% of the compensation amount.

Learned counsel appearing for the respondent, on the other hand, has opposed the submissions made by the counsel opposite and submitted that the condition imposed was in accordance with the provisions of Section 148 and could not be termed to be onerous or arbitrary. He, thus, has prayed for dismissal of the instant petition.

I have heard the learned counsel for the parties and perused the relevant material on record.

This Court does not find any merit in the submissions made by the learned counsel for the petitioner. The Hon'ble Supreme Court in '**Surinder Singh Deswal @ Col. S.S.Deswal & others Vs Virender Gandhi**' **2019 Volume (3) RCR (Criminal) 186**, while dealing with similar controversy, has held 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 Hon’ble Supreme Court, there can be no manner of doubt that the impugned order(s) does not suffer from any error and is in consonance with the provisions of Section 148 of Negotiable Instruments Act.

As a sequel to the above, the instant petition(s) being devoid of any merit, stand dismissed.

(MANJARI NEHRU KAUL)
JUDGE

15.03.2023

renu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No