

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

(118)

CRM-M-18606 of 2023
DATE OF DECISION:-18.04.2023

Ashwani Kumar

...Petitioner

VS.

Raghuvir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ashok Kumar Khunger, Advocate, for the petitioner.

HARKESH MANUJA, J.

(1) By way of present petition filed under Section 482 Cr.P.C., prayer has been made for setting aside of the order dated 03.03.2023 (Annexure P-2) passed by the first appellate Court whereby, the petitioner has been directed to deposit 20% of the compensation amount within a period of 60 days.

(2) On account of dishonour of cheque No.184513 dated 02.02.2019, the respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') and upon trial thereof the petitioner was convicted vide judgment dated 15.02.2023 with further direction to undergo sentence of simple imprisonment for a term of two years and was ordered to pay the compensation of Rs.2,23,825/- and in default thereof to further undergo simple imprisonment for a term of three months.

(3) Aggrieved thereof, petitioner filed first appeal wherein, the appellate Court while issuing notice and passing orders of suspension of sentence in favour of petitioner on 30.03.2023, directed him to deposit 20%

of the compensation amount as awarded by the trial Court to be made within a period of 60 days and in addition, the suspension of sentence was made subject to the aforesaid deposit. It is the said order passed by the first appellate Court which has been impugned by way of present petition.

(4) Learned counsel for the petitioner submits that the amount of cheque was duly returned to the respondent-complainant through RTGS, however, the said evidence has not been appreciated by the trial Court in a proper manner. Learned counsel further submits that petitioner is not in a position to deposit the amount as ordered by the first appellate Court vide impugned order on account of his weak financial capacity. He further submits that the suspension of sentence could not have been made subject to deposit of compensation.

(5) I have heard learned counsel for the petitioner and gone through the paper book. The contention as raised on behalf of petitioner to the effect that the cheque amount already stands paid to the respondent-complainant relates to the merits of the appeal and thus, needs to be gone into by the first appellate Court at the time of deciding the appeal on merits. Besides this, as regards the financial position of the petitioner, no document whatsoever in the shape of any ITR return or bank statement has been placed on record so as to support the said contention.

(6) As regards the contention raised on behalf of the petitioner, wherein challenge has been made to the order of his release on bail and suspension of sentence further made subject to his depositing 20% of compensation amount within 60 days, the same is squarely covered by the decision of this Court in case of **“Vinay Kumar Vs. State of Haryana”** reported as **2023(2) RCR (Criminal) 558**. Relevant paragraph No.12 and

13 thereof are reproduced hereunder for reference:-

“12. A perusal of Section 148 of the N.I. Act would show that it starts with a non-obstante clause stating therein that "notwithstanding anything contained in the Code of Criminal Procedure, 1973", in an appeal which has been filed against the conviction under Section 138 N.I. Act, the appellate Court has the power to ask the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation as awarded by the trial Court. Importantly, under subsection (2), it has been mentioned that the amount referred to in subsection (1) shall be deposited within sixty days from the date of the order and the same is subject to an extension of another 30 days and thus, the maximum period provided for making the deposit is 90 days. A comparison of Sections 148 and 143-A would show that subsection (5) as present in Section 143-A is conspicuously missing in Section 148. Sub-section (5) of Section 143-A states that the interim compensation payable under that Section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973. The legislative intent of not inserting a similar provision in Section 148 as provided under Section 143-A, thus, is very clear.

*13. The Hon'ble Supreme Court in **Surinder Singh Deswal @ Col. S.S. Deswal (supra)** after considering all the issues/contentions, adjudicated upon the issue whether the first appellate Court is justified in directing the appellant/convict, convicted under Section 138 of N.I. Act, to deposit 25% of the compensation/fine imposed by the trial Court pending appeal, challenging the order of conviction and sentence, while suspending the sentence under Section 389 Cr.P.C., held that 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 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 the same as having*

been vacated.”

From the above, it is apparent that on an interpretation of Sections 143-A and 148 of the Act, It has been laid down that while granting suspension of sentence, the appellate Court can make it further subject to condition of deposit of compensation amount as contemplated under Section 148 of the Act so as to utilize it as a mode of recovery of interim compensation.

In view of the finding no perversity in discretion exercised by the first appellate Court as founded under Section 148 of the Act, the present revision petition is dismissed.

18.04.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No