2023: PHHC: 129821
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.936 of 2022
Date of decision: 3rd October, 2023

Chaman Chauhan

… Petitioner

Versus

M/s Haryana Paper Industries

… Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Gurpreet Singh, Advocate for the petitioner.

Mr. Yogesh Saini, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

1. The instant revision petition is directed against order dated 24.03.2022 passed by the learned Appellate Court, whereby the petitioner was directed to pay 20% of the amount of compensation imposed upon him by the learned trial Court, to the respondent/complainant.

2. Learned counsel for the petitioner submits that the impugned order passed by the Court below reflects an arbitrary exercise of judicial discretion and is in fact contrary to the observations made by the Hon'ble Supreme Court in **'Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. & others' SLP (Crl.) No.4927 of 2023 d/d 04.09.2023.** Learned counsel submits that in **Jamboo Bhandari's case (supra),** Hon'ble the Supreme Court had categorically observed that the deposit of minimum 20% amount under Section 148 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act')

was not an absolute rule which would not accommodate any exception. Still further, while drawing the attention of this Court to the provisions of Section 148 of the Act, learned counsel has asserted that the expression used therein was that the Appellate Court ‘may’ order the appellant to deposit such amount which shall be a minimum of 20% of the fine or compensation awarded by the learned trial Court. He has, thus, argued that in view of the expression ‘may’ used, it can not be said to be a mandatory provision, rather it had been left to the discretion of the Appellate Court to impose or not even impose any compensation amount. Learned counsel has thus, submitted that no arbitrary constraint could have been imposed on the personal liberty of the petitioner, as has been erroneously done by the Court below vide the impugned order.

3. Learned counsel has further argued that the condition imposed by the learned Appellate Court below was onerous, more so, as the petitioner did not have the financial capacity to make payment of 20% of the cheque amount. A prayer has, thus, been made for setting aside the impugned order whereby the petitioner had been directed to pay 20% of the compensation imposed upon him by the trial Court, to the respondent/complainant.

4. Per contra, learned counsel for the respondent/complainant has vehemently opposed the prayer and submissions made by the counsel opposite. He submits that the petitioner had issued a cheque amounting to ₹ 25,40,754/- in favour of the complainant which was dishonoured on presentation before the Bank. The trial Court, on the basis of the evidence

and other material on record, rightly held the petitioner guilty and convicted him under Section 138 of the Act. Learned counsel submits that 20% of the compensation amount comes to just ₹ 5,081,50/- which cannot be said to be a huge amount keeping in view the fact that the petitioner had been cheated of an amount of ₹ 25.00 lacs on account of the dishonour of the cheque issued by the petitioner. It has further been submitted that, even otherwise, Section 148 of the Act confers discretion on the Appellate Court to impose condition as it may deem fit.

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

6. This Court does not find any merit in the submissions made by the 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 purposely 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."*

7. Even in **Jamboo Bhandari's case (supra),** Hon'ble the Supreme Court has categorically left it to the discretion of the Appellate Court to take a call as to whether the grant of suspension of sentence without imposing any condition of deposit of 20% of the compensation amount would be warranted or not. Moreover, the Hon'ble Apex Court has further held that it would be only in exceptional cases that the condition of imposition of minimum 20% of the compensation amount could be done away with but for which reasons would have to be recorded by the Appellate Court.

8. In view of the observations of the Hon'ble Supreme Court through its various judicial pronouncements, this Court does not find any error in the impugned order. This Court is also not inclined to stay 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 said Act.

9. As a sequel to the above discussions, the revision petition stands dismissed. However, the petitioner is granted two months extension i.e. upto 06.12.2023 to make payment of 20% of the compensation amount to the respondent.

(MANJARI NEHRU KAUL)
JUDGE

October 3, 2023
rps

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