IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-21555-2021
Decided on : April 25, 2023

HARINDER SINGH ALIAS GOLDY VIRDI
...... Petitioner

Versus

STATE OF UT AND ANOTHER
...... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

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

Mr. Anil Kumar Lamdharia, AAP for U.T. Chandigarh.

Mr. Anandeshwar Gautam, Respondent No.2 in person.

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NAMIT KUMAR, J. *(Oral)*

1. Petitioner has approached this Court by way of filing the present petition under Section 482 Cr.P.C. assailing the impugned order dated 08.04.2021 (Annexure P-1) passed by the Court of learned Additional Sessions Judge, Chandigarh in Criminal Appeal No.18 of 2021 titled as *"Harinder Singh versus Sate of U.T. and another"* whereby while suspending the sentence of the petitioner, he has been directed to deposit 20% of the compensation amount within 60 days from the date of passing of the impugned order and for staying the proceedings before the Appellate Court during pendency of the present petition.

2. Brief facts of the case are that respondent no.2-complainant had filed a complaint under Section 138 of Negotiable Instruments Act, 1881 (for short ' the NI Act') against the petitioner on the ground that the petitioner-accused, by

representing himself to be working in WWICS as Operation In-charge, has swindled a sum of Rs.15 lacs in cash from the complainant on a false assurance for expediting the very process of documentation concerning his immigration to Canada on priority basis preferably within six months. Accordingly, as assured for, original documents were handed over by the complainant to the petitioner-accused for further course of action, but when the complainant learnt about the fact that even basic documentation process has not been initiated by the petitioner, he demanded the refund of money already advanced to the petitioner, who in order to discharge his aforesaid liability, handed over a cheque bearing No. 012316 for Rs.7,00,000/- (Rs. Seven lacs only) drawn at Axis Bank, Phase-V, Mohali in favour of the respondent-complainant and further promised to refund the balance amount of Rs.8 lacs. Thereafter, respondent no.2-complainant presented the above cheque before ICICI Bank, Sector-9, Chandigarh, however, it was returned back being dishonoured with remarks "Kindly Contact Drawer/Drawee Bank and Present Again". Thereafter, the respondent no.2-complainant filed complaint under Section 138 of the NI Act against the petitioner.

3. The trial Court after hearing learned counsel for the parties and on appreciation of evidence, held petitioner guilty under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for a period of one year and to pay compensation of Rs.14,00,000/- (Rs. Fourteen lacs only) i.e. double to the cheque amount of Rs.7,00,000/- to the complainant within one month of expiry of the period of appeal or its disposal, if any, vide judgment of conviction and order of sentence dated 08.03.2021.

4. Aggrieved against the judgment and order of sentence of the trial Court, petitioner preferred an appeal before the appellate Court, wherein vide

order dated 08.04.2021, while suspending his sentence, petitioner has been directed to deposit 20% of the compensation amount within 60 days from the date of order before the trial Court.

5. Learned counsel for the petitioner contends that the impugned order dated 08.04.2021 is patently wrong as no condition can be imposed while suspending the sentence. He further submits that provisions of Sections 143-A and 148 of the NI Act nowhere provide that if the payment, as ordered, has not been deposited, the bail granted shall be liable to be cancelled.

6. *Per contra,* learned counsel for respondent no.2 contended that there is no illegality in the impugned order dated 08.04.2021 passed by the appellate Court and the same is in accordance with the provisions of the Act as well as with the interpretation given by the Hon'ble Supreme Court in various cases.

7. I have heard learned counsel for the parties and perused the record.

8. To understand the issue, it will be necessary to consider Section 148 of the NI Act as well as relevant judgments on the point:

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> "***148. Power of Appellate Court to order payment pending appeal against conviction***. *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 percent 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.*
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> *(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.

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A perusal of Section 148 of the NI 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 of the NI Act, the appellate Court has the power to ask the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation as awarded by the trial Court. Importantly, under sub-section (2) it has been mentioned that the amount referred to in sub-section (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.

This issue has been considered by the Hon'ble Supreme Court in ***"Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi and another, Criminal Appeal Nos.917-944 of 2019 "*** wherein it has been held that while entertaining an appeal filed against order of conviction under NI Act, it is the discretion of 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 Cr.P.C. to suspend the sentence and the aforesaid observations were again reiterated by the Hon'ble Apex Court in ***"Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi and another, 2020 (1) RCR (Criminal) 604"*** with further observations that the Appellate Court, on non-fulfilment of any such imposed condition, can vacate the order of suspension. Reference can be made to the following paras of the aforesaid judgment, which are as under:-

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> " *19. 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 compensatio*n awarded by the trial Court and the word used is not "shall" and th*erefore 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 Code of Criminal Procedure 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."*

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09. In view of the above position, as settled by the Hon'ble Supreme Court in ***Surinder Singh Deswal's*** case (*Supra*), it is well established that this is the sole discretion of 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, so there is no illegality or perversity in the order dated 08.04.2021 passed by the Court of learned Additional Sessions Judge, Chandigarh, and does not call for interference.

10. Accordingly, the impugned order dated 08.04.2021 passed by the Court of learned Additional Sessions Judge, Chandigarh is upheld and the present petition is dismissed, however, with no order as to costs.

April 25, 2023
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(NAMIT KUMAR)
JUDGE

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