

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

113 (04 cases)

PARMINDER SINGH SAINI

VERSUS

STATE OF HARYANA AND ANOTHER

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STATE OF HARYANA AND ANOTHER

1. CRM-M-23394-2023

..... Petitioner

..... Respondents

2. CRM-M-23444-2023

..... Petitioner

..... Respondents

3. CRM-M-23454-2023

..... Petitioner

..... Respondents

4. CRM-M-23456-2023

..... Petitioner

..... Respondents

Decided on : May 10, 2023

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Namit Gautam, Advocate for
for the petitioner(s).

Ms. Gaganpreet Kaur, DAG, Haryana.

NAMIT KUMAR, J. (Oral)

1. This order shall dispose of above mentioned four petitions, filed by the petitioner(s) as the common question of law and facts are involved in all the petitions. For the sake of brevity, facts are being culled out from the main petition i.e. CRM-M-23394-2023.

2. Petitioner has approached this Court by filing the present petition under Section 482 Cr.P.C. impugning the order dated 06.01.2023 (Annexure P-5) passed by the Court of learned Additional Sessions Judge, Panchkula, in Criminal Appeal Nos.04 of 2023 in Complaint Case No.NACT/ 768/ 08.10.2015 under Section 138 of Negotiable Instruments Act, 1881 (for short the 'Act') whereby the Appellate Court while admitting the petitioner on bail had directed the petitioner to make a payment of 20 % of the compensation amount, as awarded by learned trial Court while convicting the petitioner vide judgement dated 06.12.2022 and sentenced him vide order dated 09.12.2022 as under:-

Sr. No.	Case details	Offence	Sentence
1.	Complaint Case No.NACT/ 768/ 08.10.2015	Section 138 of Negotiable Instruments Act, 1881	Rigorous imprisonment for 01 year and under Section 357 (3) Cr.P.C. pay compensation 1.5 times of the cheque amount i.e. Rs.5,00,000/- and in default thereof, further undergo simple imprisonment for two months.

FACTS

3. In brief, respondent no.2-Jagmal Singh had filed complaint under Section 138 of the NI Act against the petitioner on the ground that the petitioner-accused alongwith his father who were in dire need of money had approached the complainant-respondent no.2 on the pretext of selling their immovable property measuring 03 acres for a sale consideration of Rs.70,00,000/- and deceived by such representation, the complainant-respondent no.2 advanced him Rs.28,00,000/- on assurance that the petitioner shall execute an agreement to sell with his father with respect to the property in question and thereafter, the petitioner refused to execute the agreement to sell on the ground that his father

was not ready to sell the property at the aforesaid agreed consideration, therefore, the petitioner promised respondent no.2 to return the advanced money and in order to discharge his liability issued four cheques in question i.e. Cheque No.000045 dated 22.03.2105 to the tune of Rs.5,00,000/-; Cheque No.000044 dated 20.03.2105 to the tune of Rs.7,00,000/-; Cheque No.000048 dated 17.03.2105 to the tune of Rs.10,00,000/- and Cheque No.000046 dated 24.03.2105 to the tune of Rs.6,00,000/-. In the instant complaint Cheque bearing No.00045 dated 22.03.2015 to the tune of Rs.5,00,000/- is in dispute, which was dishonoured with remarks "Insufficient funds" and thereafter, the respondent no.2 sent demand notice through his counsel to the petitioner but he failed to make the due payment within stipulated period of 15 days from the receipt of legal notice. Hence, respondent no.2 filed four different complaints under Section 138 of the NI Act against the petitioner.

4. 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 i.e. 1.5 times of the Cheque amount i.e. Rs.5,00,000/- as detailed in para no.2 above, vide judgment of conviction dated 06.12.2022 and order of sentence dated 09.12.2022.

5. Aggrieved against the judgment and order of sentence of the trial Court, petitioner preferred an appeal i.e. Criminal Appeal Nos.04 of 2023 before learned Additional Sessions Judge, Panchkula, and the Appellate Court vide impugned order dated 06.01.2023, while suspending the sentence of the petitioner admitted him to bail subject to deposit of 20 % of the compensation amount, as awarded by learned trial Court while convicting the petitioner vide judgement

dated 06.12.2022 and order of sentence dated 09.12.2022.

ARGUMENTS

6. Learned counsel for the petitioner contends that the impugned order dated 06.01.2023 is liable to be set aside as it is contrary to law and patently illegal as no condition can be imposed while suspending the sentence. He further submits that very condition *qua* payment of 20 % of the amount of compensation imposed upon the petitioner by the appellate court at the time of granting him bail is contrary to the vested rights of the petitioner to appeal under the provisions of the Code of Criminal Procedure, 1973. He further submits that no application under Section 148 of the NI Act has ever been moved by the respondent no.2 before the appellate court and Section 148 of the NI Act, which nowhere provides that if the payment, as ordered, is not deposited within stipulated period, the bail granted to the petitioner shall be liable to be cancelled.

7. *Per contra*, learned State counsel, who appears on the strength of advance notice having been served upon him, contended that there is no illegality in the impugned order dated 06.01.2023 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.

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

ANALYSIS OF THE ARGUMENTS

9. To understand the issue, it will be necessary to consider Section 148 of the 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.

(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 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 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 ” decided on 29.05.2019*** 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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“ 7.1. Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the NI Act was being frustrated. Parliament has thought it fit to amend Section 148 of the NI Act, by which the first appellate court, in an appeal challenging the order of conviction under Section 138 of the NI Act, is conferred with the power to direct the convicted appellant-accused 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 NI Act, it cannot be said that any vested right of appeal of the appellant-accused has been taken away and/or affected.** Therefore, submission on behalf of the appellants that amendment in Section 148 of the NI 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 NI Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in Garikapati Veeraya and Videocon International Ltd., 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 NI Act stated hereinabove, on purposive interpretation of Section 148 of the NI Act as amended, we are of the opinion that Section 148 of the NI 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 NI Act, even in a case where the criminal complaints for the offence under Section 138 of the NI Act were filed prior to Amendment Act 20 of 2018 i.e. prior to 1-9-2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the NI 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 One/compensation as imposed by the learned trial court considering Section 148 of the NI Act, as amended.*

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

*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 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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10. So far as the argument put forth by learned counsel for the petitioner that the impugned order directing payment of 20 % of the compensation amount is contrary to the right to appeal of the petition is concerned, Hon'ble Supreme Court in ***Surinder Singh Deswal (2019) Supra*** has also rejected the argument that the amendment takes away the vested right of the convict to appeal. The only implication of the amendment is that some part of the amount of fine/compensation, which is accruing towards the complainant, is directed to be paid against the convict/appellant and in favour of the complainant. This is also done bearing in mind that appellant has been convicted under Section 138 of the Act and his guilt under the offence has already been established after thorough procedure and appreciation of evidence. In the light of these facts, if an order of part payment or nominal fine is imposed upon the appellant, it cannot be seen to be an unfair and unreasonable penalization or taking away of substantive right of the convict/appellant. Therefore, the argument that the impugned order is contrary to the vested right of the petitioner to appeal is rejected.

DECISION

11. 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 under Section 148 of the Act 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 06.01.2023 passed by the Court of learned Additional Sessions Judge, Panchkula, and does not call for interference.

12. Accordingly, the impugned order dated 06.01.2023 passed by the Court of learned Additional Sessions Judge, Panchkula is upheld and the present petitions are dismissed, however, with no order as to costs.

May 10, 2023
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(NAMIT KUMAR)
JUDGE

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