

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28681-2022
RESERVED ON: 10th FEBRUARY, 2023
PRONOUNCED ON: 11th AUGUST, 2023

RAJNI DHINGRA

.....PETITIONER

VERSUS

SANJEEV CHUGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Mohit Kakkar, Advocate for
Mr. Bhupinder Ghai, Advocate
for the petitioner.

Mr. Aditya Jain, Advocate
for the respondent.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 482 Cr.P.C., has been invoked seeking quashing of condition imposed by Additional Sessions Judge, Gurugram while suspending the sentence of the petitioner vide order dated 09.05.2022 (Annexure P-5) titled **“Rajni Dhingra vs. Sanjeev Chugh”**.

2. The factual background of the present case, as set up in the complaint, is that in the month of February, 2014, Rajni Dhingra-accused alongwith her daughter in law and husband namely Sh. Virender Dhingra has approached the complainant for raising a loan amounting to Rs. 1.5 crore for Ms. Rajni Dhingra and 2 crores for Ms. Ekta Dhingra (daughter-in-law of accused) for investment purposes and for some personal needs. Accordingly, an amount of Rs. 1.5 crore was given by the complainant to the accused-Rajni Dhingra and it was agreed that she will pay the whole amount along-with

interest @ 24% per annum till 31.03.2014. The accused failed to pay the interest as agreed between the parties regularly and in discharge of her legal liability, accused issued cheque Nos.000032 and 000033 dated 06.02.2017 for an amount of Rs.50,00,000/- each, drawn on Andra Bank, Greater Kailash, New Delhi. On presentation of the cheques for encashment, the same got dishonoured with the remarks "Payment stopped by drawer".

3. Hence, the respondent/ complainant filed a criminal complainant No. RBT 130 on 05.04.2017 and vide order dated 08.04.2022, the accused was convicted under Section 138 NI Act and order dated 11.04.2022 he was sentenced to undergo Simple Imprisonment for a period of nine months. It was also ordered to pay compensation to the tune of Rs.1,50,00,000/- to the complainant and in default thereof, to further undergo imprisonment for a period of one month.

4. Thereafter, the said order was challenged before learned Appellate Court and vide order dated 09.05.2022 the learned Appellate Court while suspending the sentence of the accused, has imposed a condition, to deposit 20% of the compensation/fine amount within 60 days of this order. Hence, the present petition.

5. It has been asserted on behalf of the petitioner that the impugned order dated 09.05.2022 whereby, a condition has been imposed upon the petitioner to deposit 20% of the compensation/fine amount, is illegally and arbitrary in law.

6. Mr. Kakkar, vehemently contends that under Section 143-A and Section 148 of the Act, the Courts below do not have a deemed authority to pass such order imposing the liability of payment during the pendency of trial

or appeal and further asserted that even otherwise Sections 143-A and 148 of the Act were not in existence, as these were added vide Amendment No. 20 of 2018 in the Act. It is also argued by Mr. Kakkar that order stipulating condition as pre-requisite to deposit 20% of the compensation/like amount within a period of 60 days for suspending the sentence is bad, on account of the fact that appeal against conviction is a statutory right, which is to be heard on merits and if the appeal of the petitioner is likely to succeed in all probabilities wherein the trial Court has committed grave illegality and material irregularity while not appreciating the evidence inasmuch as the complainant has failed to prove his case beyond reasonable doubt.

7. Such argument has been strengthen further submitting that if the appeal is allowed by lower Appellate Court, the petitioner would not have any legal liability towards the respondents and as such there is no nexus with the objective for which such unprecedented condition has been imposed in the impugned order dated 09.05.2022. While concluding the submission a reference has also been made to the judgment of this Court rendered in the case of **“Vivek Sahni and another vs. Kotak Mahindra Bank Ltd”**, CRM-M-29188-2019, ***decided on 18.07.2019*** wherein, it was observed that in case of default in payment of certain percentage of interim compensation or fine, would not *ipso-facto* result in cancellation of the bail and interim compensation is not a bonanza to the complaint.

8. Heard learned counsel for the respective parties.

9. Before proceeding further, it is apposite to take note of the provisions, which have been introduced by Section 143-A and Section 148 of the Act, which are as reproduced herein below:-

“143-A. Power to direct interim compensation---(1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant---

- *(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and*

- *(b) in any other case, upon framing of charge.*

(2) The interim compensation under sub-section(1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial years, 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.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973(2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.

148.Power of Appellate Court to order payment pending appeal against conviction-----*(1) Notwithstanding anything contained in*

the Code of Criminal Procedure, 1973(2 of 1974), 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 per cent 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 subsection(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.”

10. On perusal of the newly added Sections 143-A and 148 of the Act would show that these sections have been added with 'Non Obstante' clause qua the provisions of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.').

11. The provisions of both these Sections have common elements of; giving power to the Trial Court and the Appellate Court to order compensation in favour of the complainant/holder of the cheque in due course and in case the accused is acquitted then the complainant would be required to return the amount so obtained through the court orders, with Bank rate interest.

12.

However, there are certain striking differences between the

provisions as contained in these two sections as Section 143-A of the Act gives power to the Trial Court to direct the accused to 'pay' an interim compensation which cannot be more than 20% of the 'cheque amount', at the same time Section 148 of the Act empowers the Appellate Court to direct the accused/appellant to 'deposit' minimum of 20% of 'fine' or 'compensation' awarded by the Trial Court. Hence, whereas the Trial Court cannot award more than 20% of the cheque amount, the Appellate Court is ordained to award not less than 20% of the fine or compensation. Furthermore, under Section 143-A of the Act, the Trial Court is required to order the accused to pay the said amount as interim compensation directly to the complainant. Under Section 148 of the Act, the Appellate Court is required to direct the accused/appellant to 'deposit' the said amount with the Court, which the court may subsequently order disbursal to the complainant/holder of the cheque in due course.

13. As per the provision of Section 148 of the Act, the amount ordered by the Appellate Court shall be in addition to any interim compensation already paid by the accused under the order of the Trial Court.

14. Even further, difference between these two provisions is that under Section 143-A of the Act, the amount of interim compensation awarded by the Trial Court is prescribed to be recovered under Section 421 of Cr.P.C, if not paid within specified time, whereas there is no such corresponding provision in Section 148 of the Act. Section 148 of the Act also does not prescribe any mode of recovery of amount of interim compensation awarded by Appellate Court

15. There is no doubt to the mind of this Court on perusal of the

statement of object and reasons for introducing these provisions is to address the issue of undue delay in final resolution of the cheque dishonor cases and to provide interim relief to the holder of the cheque in due course, as well as, to discourage the frivolous and unnecessary litigation; besides strengthening the credibility of the cheques as mode of payment; so as to help the trade and commerce in general and the lending institutions and the banks in particular in extending financial facilities to productive sectors of economy.

16. Reliance placed upon by learned counsel for the petitioner on ***Vivek Sahni's case (supra)*** is of no help, as it is not a case of default in payment of certain percentage of interim compensation or fine but it is a first occasion itself at the time of filing of appeal the petitioner has been called upon to pay the requisite amount as envisaged under the statute therefore the question of considering it as a bonanza in favour of complainant does not arise.

17. Further reliance placed upon the judgment rendered by the Supreme Court in the case of **"Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. And another"** is also of no help, inasmuch as it involves the adjudication for payment of compensation whether to remain suspended automatically or not in case of filing of appeal against conviction. Rather, the Apex court has observed that there is no limit of power of the Court to award compensation under Section 357 Cr.P.C., but the same must be reasonable not arbitrary and another aspect i.e. capacity of the accused to pay such compensation also to be borne in mind.

18. In the case in hand, the compensation amount has been adjudicated to be half of the amount of cheque involved which by no means

can be said to be un-reasonable or arbitrary.

19. Coming back to the question of validity for imposing the restriction to deposit 20% of the amount of compensation as a pre-requisite for suspending the sentence, the Apex Court in the case of **“Surinder Singh Deswal @ Col. S.S. Deswal and others vs. Virender Gandhi”; 2019 (11) SCC 34**, has observed that power of Appellate Court directing appellant original accused to deposit more than 20% of fine amount is mandatory in nature.

“7.1 The short question which is posed for consideration before this Court is, whether the first appellate court is justified in directing the appellants - original accused who have been convicted for the offence under section 138 of the N.I. Act to deposit 25% of the amount of compensation/fine imposed by the learned trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under section 389 of the Cr.P.C., 1973 considering section 148 of the N.I. Act as amended?

7.2 While considering the aforesaid issue/question, the Statement of Objects and Reasons of the amendment in section 148 of the N.I. Act, as amended by way of Amendment Act No. 20/2018 and section 148 of the N.I. Act as amended, are required to be referred to and considered, which read as under:

"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining

stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:-

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that 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 per cent of the fine or compensation awarded by the trial court.

4. The Bill seeks to achieve the above objectives."

"148. Power to Appellate Court to order payment pending appeal against conviction....

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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 per cent 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."

8. It is the case on behalf of the appellants that as the criminal complaints against the appellants under section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which section 148 of the N.I. Act came to be amended and therefore amended section 148 of the N.I. Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under section 138 of the N.I. Act were preferred, Amendment Act No. 20/2018 amending section 148 of the N.I. Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under section 389 of the Cr.P.C., 1973 to suspend the sentence pending appeals challenging the conviction and sentence, amended section 148 of the N.I. Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in section 148 of the N.I. Act and while suspending the sentence in exercise of powers under section 389 of the Cr.P.C., 1973 when the first appellate court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court,

the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in section 148 of the N.I. Act.

8.1 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 N.I. Act was being frustrated, the Parliament has thought it fit to amend section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under section 138 of the N.I. Act, is conferred with the power to direct the convicted accused - appellant 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 N.I. Act, it cannot be said that any vested right of appeal of the accused - appellant has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in section 148 of the N.I. 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 N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), 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 N.I. Act stated hereinabove, on purposive interpretation of section 148 of the N.I. Act as amended, we are of the opinion that section 148 of the N.I. 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 N.I. Act, even in a case where the criminal complaints for the offence under section 138 of the N.I. Act were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in section 148 of the N.I. 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 fine/compensation as imposed by the learned trial Court considering section 148 of the N.I. Act, as amended.

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.

20. The aforesaid judgment in *Surender Singh Deswal (supra)*, the Apex Court after having considered the provisions of Section 148 of Negotiable Instruments Act, 1881 and the objects and reasons for such amendment Act No.20/2018 upheld the such stipulation for suspension of sentence.

21. It is also well known to this Court that certain unscrupulous and notorious drawers of the dishonored cheque have been misusing the procedural delay to their advantage after obtaining stay on the proceedings which only frustrates the basic object and reason of incorporation of Section 138 of the Negotiable Instruments Act, 1881. The amendment in Section 148 of the said Act has been cautiously effected primarily having at the back of mind to expedite the disposal of proceedings under the Negotiable Instruments Act and by no stretch of discussion, it could be said that the substantive right of appeal of the accused-appellant has been taken away/or effected.

22. Further the Apex Court in *Surender Singh Deswal (supra)* has observed that amended Section 148 of NI Act, 1881 has purposively interpreted in such a manner it is done so as to provide, inter alia, speedy disposal of cases considering the fact that once after easy filing of the appeals and obtaining stay in the proceedings, injustice creep in to the payee of a dishonored cheque, who is forced to spend considerable time and resources in litigation to realise the value of the cheque resultantly compromise the sanctity of the cheque transaction.

23. In the light of discussions made hereinabove and the case law *Surender Singh Deswal (supra)*, the petitions hereby are dismissed being devoid of merits. The petitioners-accused are directed to deposit the amount as

ordered by the Lower Appellate Court within the stipulated time of 60 days, which may be further extended by 30 days.

24. It is however further made clear that the period of 60 days shall now be counted from the date a certified copy of the order is received by the trial Court.

11th AUGUST, 2023
sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>