

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48123 of 2022 (O&M)

Date of Decision: 26.04.2023

Balraj Singh

.....Petitioner

Vs.

Joginder

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ashok Kumar Sharma (Bhana), Advocate
for the petitioner.

Mr. Saurav Bhatia, Advocate with Mr. Neeraj Sheoran,
Advocate for the respondent.

DEEPAK GUPTA, J.

In Criminal Complaint No.NACT-00207-2019 (CNR No.HRJNA0-000830-2019) titled “Joginder Vs. Balraj Singh,” petitioner Balraj has been convicted by the Court of learned Judicial Magistrate Ist Class, Narwana, District Jind (Haryana) under Section 138 of the Negotiable Instruments Act vide judgment dated 05.04.2022. Vide separate order dated 06.04.2022, he was sentenced to undergo simple imprisonment for a period of one year and also to pay compensation amount to the extent of cheque amount, i.e. ₹8 lacs to the complainant. Petitioner filed appeal before the Court of Sessions. Learned Additional Sessions Judge, Jind vide impugned order dated 02.05.2022 (Annexure P.3), though suspended the sentence on furnishing requisite bonds but directed the petitioner – convict to deposit 20% of the compensation amount as awarded by the trial Court within 60 days.

2. It is against the above-said direction of the Appellate

Court, so as to deposit 20% of the compensation amount that this petition has been filed so as to quash the order.

3. It is contended that no such condition can be imposed under Section 389 Cr.P.C as has been held by Hon'ble Supreme Court in ***Dilip S. Dahanukar Vs. Kotka Mahindra Co. Ltd., & Anr.***, reported in 2007(2) R.C.R. (Criminal) 636; that Section 148 in the Negotiable Instrument Act was inserted by way of Amendment Act N: 20 of 2018 and the same was not in force when the alleged friendly loans were given. Apart from this, learned counsel for the petitioner has urged before this Court to direct the Appellate Court to hear the appeal without insisting on the condition of deposit of 20% of the cheque amount as per the view taken by a co-ordinate bench of this High Court in ***Manish Verma Vs. Narender Kumar Yadav – CRR No.1329 of 2019***, decided on 09.08.2022.

4. Opposing the petition, learned counsel for the respondent-complainant relied upon ***Surinder Singh Deswal Vs. Virender Gandhi, 2020(1) SCC Criminal 506***, and contended that impugned order is perfectly illegal.

5. Having considered submissions of both the sides, I find no merit in this petition.

6. In ***Surinder Singh Deswal v. Virender Gandhi, 2019 (3) RCR (Criminal) 186***, Hon'ble Supreme Court held as under,

[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. 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., 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.”

7. In view of the legal position enunciated by the Hon'ble Supreme Court as above, there is absolutely no merit in the contention raised by learned counsel for the petitioner. As far as ***Dilip S. Dahanukar Vs. Kotka Mahindra Co. Ltd., & Anr (supra)*** relied by counsel for the petitioner is concerned, that judgment was rendered by Hon'ble Supreme Court on 10.04.2007 i.e. much prior to the insertion of Section 148 of Negotiable Instruments Act and so, the said judgment has no applicability to the facts of the present case.

8. Further, in ***Manish Verma's case (supra)***, condition of 20% of the compensation amount imposed by the Appellate Court was challenged before this High Court. A co-ordinate Bench of this Court, after placing reliance upon

Surinder Singh Deswal's case (supra), clearly held that there was no merit in the petition, though Appellate Court was directed to dispose of the appeal on priority basis without taking coercive steps against the convict for non-deposit of the amount.

9. Once it is found that petition was dismissed and the order of the Appellate Court directing to deposit 20% of the compensation amount was not set aside by this Court in *Manish Verma's case (supra)*, the petitioner cannot draw any advantage, as no legal proposition was laid down by this Court nor the petitioner can insist for decision of the appeal without depositing the amount.

10. As such, the present petition is dismissed.

April 26, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No