

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

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2023:PHHC:112532

CRM-M-34305-2023

Date of decision: August 28th, 2023

Atul Goel

.....Petitioner

Versus

M/s Mangat Ram Pawan Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Fateh Saini, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

The petitioner is impugning the order dated 16.03.2023 (Annexure P-3) passed by the learned Appellate Court, Karnal, in CRA No.102 of 2023 vide which the petitioner was directed to deposit 20% of the cheque amount before the learned trial Court under Section 148 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

2. Learned counsel for the petitioner submits that the learned Appellate Court gravely erred in directing the petitioner to deposit 20% of the cheque amount, while suspending his sentence, as no such arbitrary constraints could have been imposed on the right of the personal liberty of the petitioner.

3. Learned counsel further submits that the condition of deposit of 20% of the cheque amount under Section 148 of the Act could have been only imposed on the drawer of the cheque i.e. the company in the instant case and certainly not on the petitioner, as he had been arraigned as an accused and convicted by the trial Court only in his capacity of being a Director of the accused company.

To substantiate his arguments, learned counsel has placed reliance upon the judgment of Hon'ble Bombay High Court in ***Lyka Labs Limited and Anr. Versus The State of Maharashtra and Anr. 2023 (1) Crimes 523.***

4. I have heard learned counsel for the petitioner and perused the relevant material on record.

5. It would be relevant to refer to the following observation of the Hon'ble Supreme Court in ***Surinder Singh Deswal @ Col. S.S. Deswal & others Versus Virender Gandhi 2019 (3) RCR (Criminal) 186:-***

“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.”

6. Trite to say that, Section 389 of Cr.P.C. empowers the Appellate Court to suspend sentence of the appellant accused subject to conditions, as may be imposed by it. Thus, the reliance placed by learned counsel for the petitioner on *Lyka Labs Limited's case (supra)* would not come to his rescue as even therein the Hon'ble Bombay High Court has reiterated the position of law as under:-

“50. However, in an appeal filed by persons other than a drawer Appellate Court has power under section 389 of Code of Criminal Procedure Act to direct deposit of amount in an appeal under Section 148 of NI Act filed by persons other than “drawer” against the conviction under section 138

of the NI Act while considering the application for suspension of conviction or sentence.”

7. As a sequel to the above and the settled ratio of law laid down by the Hon’ble Supreme Court in *Surinder Singh Deswal’s case (supra)*, there can be no manner of doubt that the impugned order does not suffer from any error much less any illegality and does not warrant any interference by this Court, else it would defeat the very purpose behind the enactment of Section 148 of the said Act.
8. There being no merit in the instant petition, it stands dismissed.

August 28th, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No