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

CRM-M-39833 of 2021
Reserved on: - 21.03.2023
Pronounced on: - 27.03.2023

Partap Singh
......Petitioner

Versus

Pala Ram
......Respondent

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Argued by: -Mr. Kartar Singh Malik, Advocate,for the petitioner.
Mr. Deepak Vashishth, Advocate,for the respondent.

**NAMIT KUMAR, J.**

Petitioner has approached this Court by filing the present petition under Section 482 Cr.P.C. impugning the order dated 18.03.2020 (Annexure P-1) passed by the Court of learned Additional Sessions Judge, Jind, in Criminal Appeal No.100 of 2020 whereby while suspending his sentence, petitioner has been directed to deposit Rs.10,00,000/- with the appellate Court in the shape of FDR from nationalized bank within 60 days from the date of passing of impugned order.

Brief facts of the case are that respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act (for short “the NI Act”) against the petitioner on the ground that complainant and petitioner personally dealt with each other in property matters and cash. Respondent sold his land and he was having sufficient cash. Respondent and petitioner also purchased some land jointly. Petitioner purchased land in Rajasthan and he was short of funds. Thus he took friendly loan of Rs.50 lakh from the respondent-complainant and agreed to repay the same within a short span of time. Respondent demanded the loan amount; then in discharge of his liability petitioner issued and handed over cheque No. 000013 dated 03.06.2014 worth Rs.50 lakh drawn at HDFC Bank Civil Lines Muktsar 152026 (Punjab) from account No. 04311530014487 in favour of the respondent-complainant. Respondent-complainant presented the above cheque before his banker State Bank of India, Jind, however it was returned back with remarks "Insufficient funds". Thus cheque has been dishounoured. Petitioner was informed accordingly and he assured the respondent that he has made necessary arrangements with the bank for the payment and asked him to again present the cheque. Again the said cheque was presented on 02.07.2014 but it was returned back uncleared with remarks "Insufficient Funds". It was further submitted that respondent suffered bank charges and financial losses due to illegal act and conduct of petitioner. He sent legal notice through his counsel through registered AD which was duly served upon the petitioner. However, no reply to such notice was made. Hence, respondent filed complaint under Section 138 of the NI Act against the petitioner.

The trial Court after hearing learned counsel for the parties and on appreciation of evidence, held petitioner guilty and sentenced him to undergo simple imprisonment for a period of one year and to pay fine of Rs.50,05,000/- under Section 138 of the NI Act, out of which Rs.50,00,000/- was directed to be paid to the respondent as compensation and remaining amount of Rs.5,000/- as costs of the proceedings; in default of payment of fine to further undergo simple imprisonment for two months vide judgment of conviction and order of sentence dated 20.02.2020.

Aggrieved against the judgment and order of sentence of the trial Court, petitioner preferred appeal before the appellate Court, wherein vide impugned order dated 18.03.2020, while suspending his sentence, petitioner has been directed to deposit Rs.10,00,000/- in the shape of FDR from nationalized bank within 60 days from the date of order before the appellate Court.

Learned counsel for the petitioner contends that the impugned order dated 18.03.2020 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.

Per contra, learned counsel for the respondent contended that there is no illegality in the impugned order dated 18.03.2020 passed by the appellate Court.

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

To understand the issue, it will be necessary to consider Section 148 and 143-A of the NI Act as well as relevant judgments on the point:

> *"**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 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.*

*"**143A.Power to direct interim compensation.** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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 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.*

*(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.*

*(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, shall be reduced by the amount paid or recovered as interim compensation under this section.''*

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 very issue had arisen before the Hon'ble Supreme Court in ***Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi and another, 2020(1) R.C.R. (Criminal) 604*** wherein the Hon'ble Supreme Court has held that where a conditional order of suspension of sentence has been passed by the Appellate Court, on non-fulfilment of the condition, the suspension order can be vacated. Reference can be made to the following paras of the judgment, which are reproduced as under:-

> "*15. The judgment of this Court which was delivered in the case of the present appellants i.e.* ***Criminal Appeal Nos.917-944 of 2019 (Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi)*** *(in which one of us M.R. Shah, J was also a member) was also cited before the Bench deciding the case of G.J. Raja. This Court in its judgment dated 29.05.2019 has rejected the submission of the appellants that section 148 of N.I. Act shall not be made applicable retrospectively. This Court held that considering the Statement of Objects and Reasons of the amendment in section 148 of the N.I. Act, on purposive interpretation of 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.*
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> *x x x x x*

*17. The judgment of Punjab and Haryana High Court in Vivek Sahni and another(supra) which has been relied by the learned counsel for the appellants has been noted and elaborately considered by the High Court in the impugned judgment. In paragraph 14 and 15 of the impugned judgment of the High Court reasons have been given for distinguishing the Vivek Sahni' case.*

*18. The High Court is right in its opinion that question No.2 as framed in Vivek Sahni's case was not correctly considered. When suspension of sentence by the trial court is granted on a condition, non- compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing noncompliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.*

*19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated."*

In view of the above position, as settled by the Hon'ble Supreme Court in ***Surinder Singh Deswal's*** case (supra), there is no illegality or perversity in the order dated 18.03.2020 passed by the

Court of learned Additional Sessions Judge, Jind, which does not call for interference. Accordingly, the impugned order dated 18.03.2020 is upheld.

The present petition is dismissed with no order as to costs.

**(NAMIT KUMAR)**
**JUDGE**

27.03.2023
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No