

CRM-M-37367-2023

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(116)

CRM-M-37367-2023
DATE OF DECISION: - 02.08.2023

DINESH KUMAR

...PETITIONER

VERSUS

SINGLA IRON STORE AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Vipul Sachdeva, Advocate
Legal Aid Counsel for the petitioner.

SUVIR SEHGAL, J. (Oral)

1. Petitioner has approached this Court under Section 482 of the Code of Criminal Procedure, 1973 assailing order dated 13.06.2023, Annexure P-3, whereby in an appeal, preferred by him, learned Additional Sessions Judge, Sangrur has directed payment of 20% of the compensation amount awarded by the learned Judicial Magistrate, Sunam, within a period of 60 days.
2. Counsel for the petitioner submits that the petitioner had borrowed Rs. 20,000/- from Ashok Kumar-respondent No.2 in the presence of witnesses and in lieu thereof, he had given a blank signed cheque. Even though, according to the counsel, the amount was re-paid, petitioner misused the blank signed cheque and instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 alleging that the petitioner had raised a loan of Rs.3 lacs and the cheque had been issued in discharge of a legal liability. Counsel submits that the

CRM-M-37367-2023

-2-

allegation levelled in the complaint, Annexure P-1, is that on presentation, the cheque was dishonored due to insufficient funds. Counsel submits that although the petitioner had raised his defence before the Trial Court, but by judgment dated 02.06.2023, Annexure P-1, petitioner was convicted and imposed a simple imprisonment for a period of two years and ordered to pay compensation of Rs.3 lacs to the respondents. In appeal, the Appellate Court has suspended the sentence and granted him bail vide orders, Annexure P-3, whereby the above noticed condition has been imposed.

3. Counsel for the petitioner has urged that the use of the word “may” in Section 148 confers a discretion upon the Appellate Court. Still further, by making a reference to the medical record, Annexures P-4 and P-5, respectively, counsel submits that both the petitioner and his wife are under-going treatment for cancer and therefore, the time period granted by the Appellate Court for deposit of the amount deserves to be extended.

4. I have considered the submissions made by counsel for the petitioner.

5. The argument of the counsel that the power under Section 148 is discretionary has been considered by the Apex Court in ***Surender Singh Deswal @ Col. S.S. Deswal and others Versus Virender Gandhi and another (2019) 11 SCC 341*** and has been rejected. The observations of the Supreme Court deserve to be noticed and are reproduced as under:-

“8. 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, the 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, 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. It is apparent from the above that the provision in the statute is mandatory and the Appellate Court does not have any power to reduce the amount. Therefore, the award of 20% of the amount by way of compensation for the purposes of the suspension of sentence of the appellant is in tune with the statutory provision and does not call for any interference.

7. In so far as the second submission of the counsel is concerned, this Court is of the view that the petitioner has been able to show a sufficient cause for extension of time. Although, both the certificates, Annexures P-4 and P-5, respectively, pertain to the years 2016 and 2017, but noticing that the petitioner and his spouse are cancer survivors, and have undergone chemotherapy, this Court deems it appropriate to extend the time for the deposit of the amount by another period of 30 days as is the mandate of Section 148 (2) of the N.I. Act, 1881.

8. In view of the above, without interfering with the impugned order and dismissing the petition on merits, time granted by the Appellate Court by order dated 13.06.2023 is extended by another period of 30 days.

02.08.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No