

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

Date of decision : 15th of September, 2023

CRM-M-34216-2019

Rajiv Kumar

.....Petitioner

versus

M/s Rollmax Corporation and another

.....Respondents

CRM-M-34242-2019

Rajiv Kumar

.....Petitioner

versus

M/s Rollmax Corporation and another

.....Respondents

CRM-M-34263-2019

Rajiv Kumar

.....Petitioner

versus

M/s Singla Iron and Mills Store and others

.....Respondents

CRM-M-35024-2019

Aarti Garg

.....Petitioner

versus

M/s Rollmax Corporation and another

.....Respondents

CRM-M-33620-2019

Mona Garg

.....Petitioner

versus

M/s Rollmax Corporation and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Anuj Balian, Advocate for the petitioner(s).

Ms. Puja Chopra, Advocate for the respondents.

PANKAJ JAIN, J. (ORAL)

Present petitions are directed against the orders dated 21st/22nd
of May, 2019 to the extent that sentence of the petitioners awarded on

conviction for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act') has been suspended subject to deposit of 20% amount of the compensation as per the mandate of Section 148 of the N.I. Act.

2. The petitioners preferred appeal(s) under Section 374 Cr.P.C. against the order of sentence dated 25th of April, 2019 passed by SDJM Pehowa whereby the petitioners have been sentenced as under :

Case No.	Name of the petitioner	To undergo Simple Imprisonment	To pay compensation to the complainant(s)
CRM-M-34216-2019	Rajiv Kumar	6 months	Rs.2,25,000/-
CRM-M-34242-2019	Rajiv Kumar	6 months	Rs.3,60,000/-
CRM-M-34263-2019	Rajiv Kumar	6 months	Rs.10,00,000/-
CRM-M-35024-2019	Aarti Garg	6 months	Rs.2,25,000/-
CRM-M-33620-2019	Mona Garg	6 months	Rs.7,86,000/-

3. The Appellate Court while suspending the sentence of the petitioners (in each case) has imposed the following conditions:

“xxxx

Heard on application under Section 389 Cr.P.C. for suspension of sentence. The appellant was on bail in lower Court and the maximum punishment awarded to appellant is six months, so in view of these circumstances, sentence is suspended and the appellant is admitted to bail on furnishing personal bonds in the sum of 50,000/- with one surety each in the like amount to the satisfaction of this Court and subject to deposit of 20% of the amount of compensation under Section 148 of the Negotiable Instruments Act within two months. xxx”

4. So far as the issue w.r.t. import of Section 148 of the N.I. Act is concerned, the same stands already settled by Apex Court in the case of

**'Surinder Singh Deswal @ Col. S.S. Deswal and others vs. Virender
Gandhi', (2019) 11 SCC 341** observing as under :

“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 Code of Criminal Procedure 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.”

5. Counsel for the petitioner submits that in subsequent judgment passed by Apex Court in the case of '**Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others**' [**Criminal Appeal No(S).2741 of 2023 (@ SLP (CRL.) No(S).4927 of 2023)**] Apex Court held that the direction to impose condition of interim deposit of 20% is not *de hors* exceptions and such exception shall be carved out by recording specific reasons. Reliance is being placed upon Para Nos.6 to 10 thereof which read as under :

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not.

10. In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.”

6. Per contra, Ms. Puja Chopra, Advocate representing the respondents submits that even in the case of *Jamboo Bhandari* (supra), Apex Court has already held that in order to carve out an exception the convict is required to make out exceptional circumstances whereas in the present case neither before the Appellate Court nor before this Court in

petition filed under Section 482 Cr.P.C. no such exceptional circumstance has been pleaded or referred to.

7. After going through the records of the case and after perusing the proposition of law as laid down by the Apex Court in the cases of *Surinder Singh Deswal's* case and *Jamboo Bhandari's* case *ibid*, this Court does not find any reason to interfere in the order(s) passed by the Appellate Court. There is no plea w.r.t. any exceptional circumstance that would warrant this Court to depart from the normal rule of payment of compensation of 20% as contemplated under Section 148 of the N.I. Act.

8. Consequently, the present petitions are dismissed.

9. A copy of this order be kept on the files of other connected cases.

September 15, 2023
Dpr (Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No