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

CRM-M-41531-2023 (O&M)
Date of decision: 22.08.2023

M/s Rawat Traders and another ….Petitioners

Versus

M/s Shree Ram Concrete ….Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. S.K. Tripathi, Advocate
for the petitioners.

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PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. impugning order 20.03.2023 (Annexure P-3) passed by Ld. Additional Sessions Judge, Faridabad imposing a condition of 20% of the total compensation amount of Rs.6,80,000/-.

2. The petitioner No.2 is a convict under Section 138 of the Negotiable Instruments Act, 1881 on the basis of judgment dated 20.02.2023 (Annexure P-1) passed by Ld. Trial Court and has been sentenced as under:-

Offence	Sentence	Compensation	In default
138 of Negotiable Instruments Act	To undergo simple imprisonment for a period of one year	Rs.34,00,000/-	Shall be recoverable under the provisions of Section 421/431 of Cr.P.C.

3. In appeal preferred by petitioners, the Ld. Appellate Court in terms of Section 148 of the Negotiable Instruments Act, 1881 directed the petitioners to deposit an amount of Rs.6,80,000/- i.e. 20% of the compensation amount in the form of bank draft/Fixed Deposit in favour of the complainant/respondent within a period of 60 days from the date of passing of impugned order as a condition precedent for suspension of sentence.

4. Counsel for the petitioners has relied upon catena of judgments including judgments of this Court i.e. a common judgment passed in CRM-M No.37682 of 2017, titled as *Arvind and another vs. Joginder Singh Bedi,* decided on 01.12.2017; CRM-M No.21964 of 2019, titled as *Ramesh Chander Yadav and others vs. Englesh Singh,* decided on 05.07.2022; CRM-M No.12122 of 2018, titled as *Jitender Kumar Sarita vs. Smt. Usha Suri,* decided on 02.08.2022 and CRR No.1329 of 2019, *Manish Verma vs. Narender Kumar Yadav,* decided on 09.08.2022, to contend that the condition of deposit of 20% of the compensation amount is onerous and the coordinate benches have allowed the suspension of sentence *dehors* the deposit of the amount as per Sub-section (2) of Section 148 of the Negotiable Instruments Act, 1881.

5. I have heard the counsel for petitioners and have gone through records of the case. Section 148 has been inserted by Act 20 of 2018 and the statement of objects and reasons thereof reads as under:-

> *"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from*

time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.

***2**. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.*

***3**. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely—*

(i) to insert a new Section 143-A in the said Act to provide that the court trying an offence under Section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new Section 148 in the said Act so as to provide that 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.

***4**. The Bill seeks to achieve the above objectives."*

6. The import of the provision fell for consideration before the Apex Court in the case of ***Surinder Singh Deswal @ Colonel S.S. Deswal and others vs. Virender Gandhi, (2019) 11 Supreme Court Cases 341***, wherein the Apex Court held as under:-

"xxxx xxxx xxxx

8. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the NI 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 NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, though it is true that in the amended Section 148 of the NI 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 NI 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 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the NI 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 NI Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the NI Act, but also Section 138 of the NI 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 dishonour 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 NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the NI Act and also Section 138 of the NI Act.*

xxxx xxxx xxxx"

7. In the considered opinion of this Court, the way counsel of the petitioner has tried to read the relevant provision, it would render the provision otiose and defeat the very purpose of incorporation thereof.

8. In view thereof, this Court does not find any reason to interfere. Petition is dismissed.

9. Pending application(s), if any, shall also stand disposed of.

(PANKAJ JAIN)
JUDGE

August 22, 2023
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No