

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

118

CRM-M-42318-2023

Date of decision: 25.08.2023

Gurbir Singh

.....Petitioner

Versus

Ajay Pal

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Arpandeeep Narula, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner in the instant petition filed under Section 482 Cr.P.C. is seeking quashing of order dated 01.07.2023 (Annexure P-3) passed by the learned Additional Sessions Judge, Sirsa in CRA No.208 of 2023 titled as 'Gurbir Singh Vs. Ajay Pal' whereby he was directed to make payment of 20% of cheque amount.

2. Learned counsel for the petitioner submits that the impugned order which has been passed by the Court below reflected an arbitrary exercise of judicial discretion. It has been vehemently submitted that the learned appellate Court erred in directing the petitioner to make payment of an amount to the extent of 20% of the cheque amount, while suspending his sentence as no arbitrary constraints could be imposed on the rights of the personal liberty of a person.

3. It has been submitted that the condition imposed by the learned appellate Court was onerous, more so since the petitioner did not have the financial means to make payment of 20% of the cheque amount. A prayer has, therefore, been made to quash the said condition.

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

5. This Court finds no merit in the submissions made by learned counsel for the petitioner. The Hon'ble Supreme Court in **'Surinder Singh Deswal @ Col. S.S. Deswal & others vs. Virender Gandhi' 2019 (3) RCR (Criminal) 186**, while dealing with similar controversy, observed 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 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. In view of the above observations of the Hon’ble Supreme Court, there can be no manner of doubt that the impugned order does not suffer from any error and has been passed as per provisions of section 148 of the Negotiable Instruments Act, 1881. This Court is also not inclined to stay the disbursement of the interim compensation during the pendency of the appeal as it would defeat the very purpose behind enactment of Section 148 of the said Act.

7. As a sequel to the above, there being no merit in the instant petition, the same stands dismissed.

8. At this stage, learned counsel for the petitioner prays for extension of time to make payment of 20% of the cheque amount.

9. The petitioner is granted one month extension i.e. upto 01.10.2023 to make payment of 20% of the cheque amount.

25.08.2023

Vinay

(MANJARI NEHRU KAUL)

JUDGE

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