IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-43012-2023 (O&M)
Date of Decision: 29.08.2023

Sukhdev Singh Hari . . . . **Petitioner**

Vs.

Sarbjit Singh Toor . . . . Respondent

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. Ankush Singla, Advocate, for the petitioner.

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<u>DEEPAK GUPTA, J.</u>

Prayer in this petition filed under Section 482 Cr.P.C. is to quash order dated 06.05.2022 (Annexure P2), passed by ld. Additional Sessions Judge, Bathinda in CRA-136-2022 to the extent of directing the petitioner to deposit an amount of 20% of the compensation as awarded by the trial Court.

2. As the paper-book reveals, on the complaint filed by respondent-Sarabjit Singh, petitioner-Sukhdev Singh Hari was convicted by the Court of ld. JMIC, Bathinda under Section 138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act'] vide judgment dated 08.04.2022 in criminal complaint bearing CNR No. PBBT03-000352-2017 titled 'Sarbjit Singh Toor Vs. Sukhdev Singh Hari'. Vide a separate order of the even date, petitioner was sentenced to undergo rigorous imprisonment for a period of two years and also to pay compensation to the tune of ₹78,03,000/- along with interest @ 9% per annum from the date of issuance of the cheque till date.

3. Against the aforesaid judgment of conviction of sentence, petitioner filed appeal before the Court of Sessions along with an application under Section 389 Cr.P.C. for suspending the sentence and for grant of bail.

4. On the aforesaid application, following order dated 06.05.2022 (Annexure P2) was passed by ld. Additional Sessions Judge, Bathinda: -

> *"Appeal received by way of entrustment. It be registered under rules.*
> *Along with appeal an application under Section 389 Cr.P.C. has been moved for suspension of sentence and grant of bail to the appellant/accused. Keeping in view that disposal of the appeal may take sufficient time, as such, appellant is ordered to be released on bail, on furnishing bail bonds in the sum of ₹80,000/- with one surety in the like amount to the satisfaction of Illaqa/Duty Magistrate, within 15 days from today and also with the condition that the appellant will deposit 20% of the compensation amount awarded by trial Court before this Court within statutory period i.e. 60 days from today as per the Amendment Act No.20 of 2018. Application under Section 389 Cr.P.C. filed by the appellant stands disposed of.*
> *After attestation of the bonds, the same be sent to this Court immediately. Notice to the respondent be issued for 09.08.2022. Lower Court record be also summoned for that date."*

5. Assailing the aforesaid order by way of present petition, it is contended by ld. counsel that complaint has been filed by exaggerating the amount and that petitioner is not in a position to pay 20% of such a huge amount. It is further contended that ld. trial Court has not considered that complainant was not legally entitled to recover the amount. Besides, intent of the legislature in enacting Section 148 of the NI Act, was not to impose interim compensation in every appeal preferred by the convicted person and that the use of the word 'may' would reveal that it is not mandatory for the Court to impose such a condition.

6. Having considered submissions of ld. counsel for the petitioner, this Court finds no merit therein.

7. Section 148 of the NI Act reads as under: -

> ***148. Power of Appellate Court to order payment pending appeal against conviction. —***
>
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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.*

8. In ***Surinder Singh Deswal @ Col. S.S. Deswal and others Vs. Virender Gandhi,*** *2019(3) RCR (Criminal) 186,* Hon'ble Supreme Court, by interpreting the aforesaid provision of Section 148 of the NI Act, has observed as under: -

> *"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."*

9. It is, thus, clear from the aforesaid legal position explained by the Hon'ble Supreme Court that Section 148 of the NI Act confers power on 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 application filed by the original complainant or even on the application filed by the appellant/accused under Section 389 Cr.P.C. to suspend the sentence.

10. In the present case, the impugned order Annexure P2, reproduced earlier, has been passed by ld. Appellate Court, while suspending the sentence of the petitioner under Section 389 Cr.P.C. and therefore, no illegality can be found in the impugned order, which is in consonance with the legal position explained by the Hon'ble Supreme Court in ***Surinder Singh Deswal's*** case (Supra). Merits of the case are not required to be considered at this stage, while ordering payment of minimum 20 % of the compensation amount, under Section 148 of the NI Act.

11. As such, finding no merit in the present petition, the same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

29.08.2023
Vivek

1. Whether speaking/reasoned? ***Yes****/No*
2. Whether reportable? *Yes/No*