IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-54807-2022
Date of decision:- 30.11.2023

Deepak Kumar

... Petitioner

Versus

State of Haryana and another .. Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.R.S. Randhawa, Advocate
for the petitioner.

Mr.Munish Sharma, DAG, Haryana
for respondent No.1 - State.

Mr.Munish Mittal, Advocate
for respondent No.2.

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SUVIR SEHGAL, J. (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., petitioner has laid challenge to order dated 29.09.2022, Annexure P1, passed by learned Additional Sessions Judge, Faridabad in CRA No.307 of 2022 titled as "Deepak Kumar Versus Jal Shakti Vihar Residential Welfare Society", whereby while granting bail to the petitioner, the Appellate Court has imposed a condition of deposit of 20% of the compensation amount under Section 148 of the Negotiable Instruments Act, 1881 (for short – NI Act).

2. Counsel for the petitioner submits that complainant - respondent

No.2 filed a complaint under Section 138 of NI Act claiming that a cheque of Rs.10 lakhs drawn on HDFC Bank, Section 35, Faridabad from the account of M/s Divyan Developers Private Ltd. in favour of the complainant was given by the petitioner in discharge of a legally enforceable debt, which on deposit has been dishonoured on account of "Insufficient Funds". Counsel submits that the cheque in dispute was issued from the account of a limited company. However, the complainant neither impleaded the company as an accused nor did he serve any notice to it prior to the institution of the complaint. Still further, it is his argument that the cheque had been given by way of a security deposit, which has been misused by the complainant. Counsel submits that although all the facts were brought to the notice of the learned trial Court, but the trial Court vide judgment dated 24.08.2022, Annexure P4, convicted the petitioner and sentenced him to imprisonment for a period of one year and also directed him to pay a compensation of Rs.20 lakhs i.e. double the cheque amount. Counsel submits that the petitioner has instituted an appeal before the Appellate Court, which is pending along with an application under Section 389 Cr.P.C. for releasing the appellant on bail, which has been accepted by the impugned order and while suspending the sentence of the petitioner, he has been directed to deposit an amount of Rs.4 lakhs i.e. 20% of the compensation amount within a period of 60 days. Counsel contends that as the complaint itself was not maintainable, and the security cheque had been misused. Some other complaints on the same cause were also filed by the complainant against which, appeals are pending and the petitioner has been directed to deposit 20% of the compensation amount. Counsel submits that the petitioner is not in a financial capacity to deposit the amount ordered by the Appellate Court. In the alternative, he has prayed that the period for deposit of the amount be extended.

3. Opposing the petition, counsel representing complainant – respondent No.2 submits that deposit of 20% of the compensation amount has been ordered in view of provisions as contained in Section 148 of NI Act and the amount can neither be waived nor reduced. He submits that similar orders passed in other complaints have been unsuccessfully challenged by the petitioner before this Court and he has failed upto the Hon'ble Supreme Court.

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

5. Interpreting Section 148 of the NI Act, Supreme Court in ***Surinder Singh Deswal @ Col.S.S. Deswal and others Versus Virender Gandhi and another (2019) 11 SCC 341*** has noticed the purpose behind the introduction of the provision in the NI Act and has construed the provision to be mandatory. It has been held that the Appellate Court is bound to order the deposit of minimum 20% of the compensation amount or fine within a period of 60 days, although this period can be extended by another 30 days on a sufficient cause being shown by the accused.

6. In view of the enunciation of law by the Apex Court, there is no ground to interfere in the order passed by the Appellate Court. However, it cannot be disputed that some similar complaints had been instituted against the appellants wherein similar orders have been passed and the petitioner has been directed to deposit an amount equivalent to 20% of the compensation awarded by the trial Court. The petitioner has claimed that he is not in a

financial capacity to deposit such a high amount in one go. Therefore, keeping in view Sub-Section 2 of Section 148 of the NI Act, this Court is of the view that the interest of justice would be secured in case the petitioner is granted extended period of 30 days to deposit the amount.

7. In view of the above, petitioner is granted another period of 30 days from today to deposit the amount in compliance of the order, Annexure P1, passed by the Appellate Court. All other conditions laid down in the said order shall remain as they are.

8. Petition is disposed of.

(SUVIR SEHGAL)
JUDGE

30.11.2023
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Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No