

117-B

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

CRM-M-8285-2023
Date of decision : 16.02.2023

DEEPAK KUMAR

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

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

HARSH BUNGER, J.

The petitioner in the present petition is seeking quashing of order dated 29.09.2022 (Annexure P-1) passed by learned Additional Sessions Judge, Faridabad in ***CRA-305-2022*** titled as ***M/s Divyan Infratech Pvt. Ltd. and another vs Jal Shakti Vihar Residential Welfare Society***, whereby, the petitioner (appellant-convict in CRA-305-2022) has been directed to deposit 20% of the compensation amount awarded by the trial Court within 60 days from the date of order in view of Section 148 of the Negotiable Instruments Act, 1881 (for short '***N.I Act, 1881***') (as amended up-to-date).

Brief facts of the case are that respondent No.2-complainant filed a complaint under Section 138 of the N.I Act, 1881, by stating that the complainant is the Residential Welfare Society of Jal Shakti Vihar, which is situated at Sector 63, Unchagaon, Faridabad and the petitioner was stated to be the former Treasurer of the above said Society for the year 2012-13. It was stated that the petitioner (herein), during his tenure as Treasurer of the

Jal Shakti Vihar Residential Welfare Society, has diverted and transferred Rs.88.50 lacs from the period 23.04.2012 to 28.11.2013 from the bank account No.82142010123587 at Syndicate Bank, NIT, Faridabad of the society in the bank account of his own company in the name of M/s DivyanInfratech Pvt. Ltd. It is further stated in the complaint that after the fund diversion came into the light, the accused in the complaint promised to refund 50% of the amount by November, 2017 and balance 50% payment by March, 2018, which was also recorded in the minutes of General Body Meeting of the society held on 24.09.2017. It was further stated that in the said meeting, the petitioner issued post dated cheque No.000192 dated 25.04.2018 for Rs.10,00,000/- drawn at HDFC Bank Ashoka Enclave, Sector 35, Faridabad (the petitioner being authorized signatory of M/s DivyanInfratech Pvt. Ltd.), being part payment, in the name of complainant-Society from Account no.50200008520161 towards the discharge of their liability. However, when the said cheque was presented, the same was dishonoured with remarks "*Funds Insufficient*" and was returned vide memo dated 03.05.2018. It appears that thereafter, a legal notice (Annexure P-3) dated 29.05.2018 was sent, which was followed by the complaint under Section 138 of the N.I. Act, 1881, against the present petitioner and others. The Judicial Magistrate Ist Class, Faridabad, after appreciating the evidence on record, convicted the present petitioner and M/s Divyan Infratech Pvt. Ltd. vide judgment dated 24.08.2022 and further passed order of sentence vide order dated 29.08.2022 (Annexure P-4), whereby petitioner on behalf of M/s Divyan Infratech Pvt. Ltd. was sentenced to undergo simple imprisonment for a period of one year and further to pay the compensation to the tune of Rs.20,00,000/- (double of the cheque amount) to the

complainant under Section 143(1) of the N.I. Act read with Section 357(1)(3) of the Cr.P.C., within a period of one month from the date of passing of said judgment.

The petitioner challenged the aforesaid judgment of conviction and order of sentence by filing an appeal before the Court of Sessions Judge, Faridabad, which came to be registered as CRA-305-2022. Along with the appeal; the petitioner also filed an application for suspension of sentence.

Learned Additional Sessions Judge, Faridabad, vide order dated 29.09.2022, suspended the sentence of the petitioner by observing as under:-

“In the present case, the cheque amount is Rs.10,00,000/- and the compensation awarded by Ld. Trial Court is Rs.20,00,000/-. Having regard to the aforesaid provision i.e. Section 148 of the N.I. Act, appellant is directed to deposit an amount of Rs.4,00,000/- 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 today. On deposit of the said draft, the same shall be dealt with in terms of provision contained u/s 148 of N.I. Act.

5. In case aforesaid amount will not be disbursed to complainant and appeal is not disposed of prior to the validity period of Bank draft, then appellant shall furnish fresh draft of the same amount with fresh validity period, till the appeal is disposed of. Ordered accordingly. Subject to the aforesaid conditions, appellant-Deepak Kumar is admitted to bail on furnishing bail bonds in the sum of Rs.2,00,000/- with one surety in the like amount to the satisfaction of this Court.”

The present petition has been filed challenging the order dated 29.09.2022 (Annexure P-1) passed by learned Additional Sessions Judge,

Faridabad to the extent whereby the bail under Section 389 of the Code of Criminal Procedure granted to the petitioner has been made subject to condition of deposit of 20% of compensation amount awarded by trial Court.

The said impugned order has been challenged primarily on two grounds *i.e.*

(i) that the provisions contained in Section 148 of the Negotiable Instruments Act, are only directory and not mandatory and accordingly, the impugned order may be quashed to the extent whereby, the petitioner has been directed to deposit 20% of the compensation amount awarded by the trial Court in terms of Section 148 of the N.I. Act;

(ii) that the suspension of sentence granted by the lower Appellate Court could not have been made subject to deposit of 20% of the compensation amount awarded by the trial Court.

I have heard learned counsel for the petitioner and have perused the paper book as well as impugned order dated 29.09.2022 (Annexure P-1) passed by the learned Additional Sessions Judge, Faridabad.

Section 148 of the N.I. Act, 1881 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.]

The aforesaid provision has been considered and stands settled by an authoritative judgment passed by Hon'ble the Apex Court in ***Surinder Singh Deswal @ Col. S.S. Deswal v. Virender Gandhi AIR 2019 Supreme Court 2956***, the relevant paragraph nos.8, 9 and 10 are quoted below :-

"8. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which Section 148 of the N.I. Act came to be amended and therefore amended Section 148 of the N.I. Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under Section 138 of the N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I. Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in Section 148 of the N.I. Act and while suspending the sentence in exercise of powers under Section

389 of the Cr.P.C., when the first appellate court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the N.I. Act.

8.1 Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused - appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused - appellant has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected.. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the

offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.

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. 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 Sec 138 of the N.I. Act.

10. Now so far as the submission on behalf of the appellants, relying upon Section 357(2) of the Cr.P.C. that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in the case of Dilip S. Dhanukar (supra) is concerned, the aforesaid has no substance. The opening word of amended Section 148 of the N.I. Act is that "notwithstanding anything contained in the Code of Criminal Procedure.....". Therefore irrespective of the provisions of Section 357(2) of the Cr.P.C.,

pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court."

From perusal of the above referred judgment in ***Surinder Singh Deswal's*** case (*supra*), it is observed that the applicability of the provision under Section 148 of the N.I Act, 1881 is mandatory. Further, Section 148 of the N.I. Act, 1881 envisages deposit of minimum 20% amount and Section 148 of the N.I. Act, 1881 starts with a non obstante clause. Thus, the contention of learned counsel for the petitioner that provisions contained in Section 148 of the N.I Act, 1881 are directory and not mandatory, is hereby rejected.

Further, Hon'ble the Apex Court in the second round of litigation, in the above referred ***Surinder Singh Deswal's*** case (*supra*) further considered the issue, where the suspension of sentence was subject to the condition of deposit of 25% of the amount of compensation and when the condition for suspension of sentence was not complied with, the concerned Additional Sessions Judge, had taken the view that the order of suspension of sentence shall be deemed to have been vacated and the High Court had upheld the view of learned Additional Sessions Judge. Accordingly, the Hon'ble Apex Court in ***Surinder Singh Deswal @ Col. S.S. Deswal & Ors. Vs Virender Gandhi &Anr. 2020(1) R.C.R. (Criminal) 604***, held as under :-

"13. The second round of litigation which was initiated by the appellant by filing application under Section 482 Cr.P.C., 1973 was against the order dated 20.07.2019 passed by the Additional Sessions Judge,

Panchkula by which Additional Sessions Judge held that the appellant having not complied with the direction dated 01.12.2018 to deposit 25% of the amount of compensation, the order of suspension of sentence shall be deemed to have been vacated. The order dated 20.07.2019 was an order passed by the Additional Sessions Judge on account of failure of the appellant to deposit 25% of the amount of compensation. The suspension of sentence on 01.12.2018 was subject to the condition of deposit of 25% of the amount of compensation, when the condition for suspension of sentence was not complied with, learned Additional Sessions Judge was right in taking the view that order of suspension of sentence shall be deemed to have been vacated. Challenge to order dated 20.07.2019 has rightly been repelled by the High Court by its elaborate and well considered judgment dated 10.09.2019.

... 18. ... *When suspension of sentence by the trial court is granted on a condition, non compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.*

19. *It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the*

Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.”

Further, in somewhat similar circumstances, a Co-ordinate Bench of this Court in ***Harwinder Singh vs Mohan Lal 2022(1) R.C.R. (Criminal) 136***, framed the following question :-

7. xxx xxx

Q. Whether while suspending the sentence of the applicant/convict, the Appellate Court in an appeal against conviction under section 138 of the N.I. Act, can impose a condition that on non-deposit of minimum of twenty percent of the fine/compensation awarded by the trial court, as ordered by the Appellate court while exercising its powers under section 148 of the NI Act, the benefit of suspension of sentence would be liable to be automatically/consequently vacated?

After discussing the law on Section 148 of the N.I. Act, 1881, it was held in para No.19 of ***Harwinder Singh’s case (supra)*** as under :-

“19. That the Appellate Court in an appeal against conviction under Section 138 of the N.I Act, while suspending the sentence of the Appellant/Convict, has the power to impose a condition that on non-deposit of the fine/compensation, the benefit of suspension of sentence would be liable to be automatically/consequently vacated.”

Similar view has been taken by this Court in ***M/s White Horse Network Services Pvt. Ltd. &Anr. vs State of Haryana &Anr. (CRM-M-60897-2022*** decided on ***04.01.2023***.

In view of the aforesaid discussion, there is no force in the submissions of learned counsel for the petitioner that the Appellate Court

while granting bail, cannot make it subject to compliance of direction to deposit a part of compensation amount awarded by the trial Court, as provided under Section 148 of the N.I Act, 1881.

Accordingly, this Court does not see any reason to interfere with the impugned order dated 29.09.2022 (Annexure P-1) passed by the learned Additional Sessions Judge, Faridabad. There is no illegality or perversity in the order dated 29.09.2022 (Annexure P-1) and the present petition being devoid of any merit, is hereby dismissed.

February 16, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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