

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2600-2023

Reserved on: 09.11.2023

Pronounced on: 29.11.2023

CHAMKAUR SINGH

. . . . Petitioner

Vs.

The Moga Central Co-Op. Bank Ltd.

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Buta Singh Bairagi, Advocate, for the petitioner.

DEEPAK GUPTA, J.

Petitioner is aggrieved by the order dated 24.08.2023 passed by Id. Additional Sessions Judge, Moga in CRA-239-2023, whereby he has been directed to deposit 20% of the compensation as awarded by the trial Court.

2. As it emerges on perusal of the paper-book, petitioner was convicted on 24.07.2023 by the Court of Id. Sub Divisional Judicial Magistrate, Baghapurana, in case No. NACT 109/2021 tiled '*The Moga Central Co-op. Bank Ltd. Vs. Chamkaur Singh*' under Section 138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act'] and was sentenced to undergo rigorous imprisonment for a period of 2 years and to pay fine of ₹5,000/- with default sentence. In addition thereto, petitioner was further directed to pay compensation to the extent of ₹16,48,120/- i.e., equivalent to the cheque amount, which was also recoverable, in accordance with law.

3. Against the abovesaid conviction and sentence, petitioner filed appeal. Vide impugned order dated 24.08.2023 of the appellate court, though sentence of the petitioner was suspended under Section 389 CrPC till final disposal of the appeal, but at the same time it was made subject to the condition that petitioner shall deposit 20% of the compensation amount as mentioned by the trial Court within 30 days as provided under Section 148 of the NI Act and as per the legal position explained by Hon'ble Supreme Court in ***Surinder Singh Deshwal @ Col. S.S. Deswal and others Vs. Virender Gandhi and another, 2020(2) SCC 514.***

4. The aforesaid order dated 24.08.2023 has been assailed in the present revision by submitting that petitioner is a small farmer doing organic farming. During the Covid period, he went into loss and therefore his case falls in the 'exceptional circumstances' inasmuch even his application for waiving the loan is pending in the office of Special Principal Secretary to the Chief Minister, Punjab as per letter Annexure P2.

5. Ld. Counsel further contends that even in his statement under Section 313 CrPC, petitioner had denied the allegation of complaint and had taken the plea of false implication to the effect that neither he had taken any loan except one agricultural loan/limit nor had given any cheque to the complainant/Bank. Ld. counsel contends that in view of the exceptional circumstances, the condition of deposit of 20% of the compensation amount is liable to be exempted in view of the legal position explained by Hon'ble Supreme Court in ***"Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Ltd. and others" [Criminal Appeal No.2741 of 2023 (@ SLP (Crl.) No.4927 of 2023)]***.

6. I have considered submission of counsel for the petitioner.

7. In the case of ***Surinder Singh Deshwal @ Col. S.S. Deswal (Supra)***, Hon'ble Supreme Court interpreted the word "may" appearing in Section 148 of the NI Act as "shall" and held that relief of suspension of sentence under Section 389 CrPC can be granted only by directing the accused to deposit minimum of 20% of the compensation/fine amount. It was held as under: -

"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 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, 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 file 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 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."

8. In the case of ***Jamboo Bhandari (supra)***, the appellate Court had directed the convict to deposit 20% of the amount of compensation, while suspending his sentence under Section 389 CrPC. High Court confirmed that order passed by the Sessions Court. Hon'ble Supreme Court after referring to the above said paragraph 8 of the case of ***Surinder Singh Deshwal @ Col. S.S. Deswal (Supra)***, then held as under: -

"6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not.

10. In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.”

9. It is, thus, clear that deposit of minimum 20% amount is not an absolute rule, not accommodating any exception. When Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused, who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case, which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. In case, the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.

10. In the present case, it was the specific stand of the petitioner before the trial Court that he had never taken any loan except one agricultural loan/limit. Petitioner also placed on record copy of the application dated 03.08.2023 (Annexure P2) sent to the Special Principal Secretary of Chief Minister, Punjab, Civil Secretariat, Chandigarh so as to waive of his loan on account of the losses suffered by him during the Covid

period. Once the aforesaid contention was raised by the petitioner, it was required to be considered by the appellate court as to whether the case of the petitioner falls in the 'exceptional circumstances' or not so as to exempt him from depositing 20% of the compensation amount.

11. Although counsel for the petitioner conceded that no such plea was raised before the Appellate court, but Id. counsel has relied upon the observations made by Hon'ble Supreme Court in the case of *Jamboo Bhandari (Supra)* in para No.9, wherein also the similar contention was raised and it was held that normally while accused applies under Section 389 CrPC for suspension of sentence, he prays for relief of suspension of sentence without any condition and that when a blanket order is sought, the Court has to consider whether the case falls in the exception or not.

12. In view of the aforesaid discussion, the impugned order dated 24.08.2023 passed by Id. Additional Sessions Judge, Moga in CRA-239-2023 is hereby set aside. The matter is referred back to the concerned Appellate Court with the direction to consider the plea of the petitioner so as to exempt depositing of 20% of the compensation amount and to give a finding as to whether his case falls in the 'exceptional circumstance' or not. Parties are directed to appear before the Court of Id. Additional Sessions Judge, Moga on 18.12.2023.

Present petition is disposed of accordingly.

(DEEPAK GUPTA)
JUDGE

29.11.2023

Vivek

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No