IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-51257-2019

Decided on : April 12, 2023

KRISHAN KUMAR

...... Petitioner

VERSUS

GHARDA CHEMICALS LIMITED AND ANOTHER

...... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Garima Modi, Advocate for
Mr. Drupad Sangwan, Advocate
for the petitioner.

Mr. Arun Chandra, Advocate for the respondent no.1.

Mr. Vikrant Pamboo, DAG, Haryana.

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NAMIT KUMAR, J. *(Oral)*

1. Petitioner has approached this Court by filing the present petition under Section 482 Cr.P.C. impugning the order dated 09.09.2019 (Annexure P-3) passed by the Court of learned Additional Sessions Judge, Hisar, in Criminal Appeal No.145 of 2017 whereby the appellate Court had directed the petitioner to make a payment of 20 % of the compensation amount, as awarded by learned trial Court while convicting the petitioner vide judgement dated 21.02.2017 and order of sentence dated 23.02.2017 to undergo simple imprisonment for period of two years for commission of an offence under Section 138 of Negotiable Instruments Act, 1881 (for short ' the NI Act') and pay compensation to the tune of cheque amount i.e. Rs.1,08,00,000/- (Rs. One crore eight lacs only).

2. Brief facts of the case are that respondent-complainant company through its Assistant Zonal Manager (Mr. Sunil Yadav) had filed a complaint under Section 138 of the NI Act against the petitioner on the ground that the petitioner-accused used to purchase various agricultural chemicals, pesticides and insecticides produces from the complainant company from time to time and against such dealings, a sum of Rs.1,08,00,000/- was due towards the accused as on 08.12.2014, so in order to discharge the aforesaid liability, the petitioner-accused issued and handed over a cheque No. 860634 dated 03.12.2014 for Rs.1,08,00,000/- (Rs. One crore eight lacs only) drawn at Dena Bank, Hisar (Haryana) in favour of the respondent-complainant company. Thereafter, respondent-complainant company presented the above cheque before his banker, however, it was returned back vide memo dated 04.12.2014 being dishonoured with remarks "Insufficient funds". Thereafter, the respondents- complainant company sent legal notice through his counsel through registered AD to the petitioner but he failed to make the due payment within stipulated period of 15 days. Hence, the respondent-complainant company filed complaint under Section 138 of the NI Act against the petitioner.

3. The trial Court after hearing learned counsel for the parties and on appreciation of evidence, held petitioner guilty under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for a period of two years and to pay compensation of Rs.1,08,00,000/- (Rs. One crore eight lacs only) to the complainant within one month and in default of the payment of compensation to further undergo simple imprisonment for three months vide judgment of conviction dated 21.02.2017 and order of sentence dated 23.02.2017.

4. Aggrieved against the judgment and order of sentence of the trial Court, petitioner preferred appeal before learned Additional Sessions Judge, Hisar, and the appellate Court vide impugned order dated 09.09.2019 directed the petitioner to make a payment of 20 % of the compensation amount, as awarded by learned trial Court while convicting the petitioner vide judgement dated 21.02.2017 and order of sentence dated 23.02.2017.

5. Learned counsel for the petitioner contends that the impugned order dated 09.09.2019 is contrary to law and liable to be set aside. It is submitted that the newly added Sections 148 and 143A of the NI Act came into force on 1st September, 2018, whereas the appeal had been filed in the year, 2017, that is, before the said amendment, hence, the matter did not fall in the ambit of the same, since the amended provisions are not retrospective for appeals filed prior to the amendment.

6. Learned counsel for the petitioner furhter submits that the impugned order passed by the learned Addl. Sessions Judge, Hisar suffers from severe illegalities, perverse, against the settled principles of law and hence, liable to be set aside.

7. *Per contra,* learned counsel for the respondent contended that there is no illegality in the impugned order dated 09.09.2019 passed by the appellate Court and the same is in accordance with the provisions of the Act as well as with the interpretation given by the Hon'ble Supreme Court in various cases. It is submitted that there is no doubt to the fact that the amendment that came into force on 1st September, 2018, thereby, introducing Section 148 to the NI Act, is retrospective in nature. The position is clear in light of the judgments of ***Surender***

Singh Deswal **(2019),** ***Surender Singh Deswal @ Col S.S. Deswal & Ors vs. Virender Gandhi,*** **(2020) 2 SCC 514.** Hon'ble Supreme Court has made it clear that relief under Section 148 of the NI Act would be available to the complainant even in cases where the complaint case has been filed prior to the amendment. The interpretation of the Hon'ble Supreme Court, to the effect that Section 148 of the NI Act is applicable even for the complaints filed before the amendment, suggests that the appellant before the Court in an appeal arising out of a complaint filed before the amendment could be subjected to the provisions of Section 148 of the NI Act. Meaning thereby, that Section 148 will be applicable to an appeal arising out of complaint prior to the amendment, irrespective of being filed before or after the amendment.

8. It is further submitted that there is no bar on limitation or with respect to the stage at which Section 148 may be invoked. Section 148 of the NI Act is to be given purposive interpretation to include complaint cases and appeals filed before the amendment in its purview in order to give force to the objectives as stated in the Statement of Objects and Reasons of the amendment. The purpose of introducing Section 148 of the NI Act is to avoid frivolous and ingenuine appeals and the same has to be given effect by extending the application of the provision to appeals that arise from complaints filed before the amendment was brought about. Hence, any appeal at any point of time arising out of a complaint case filed before the Court concerned could be subjected to passing or an order by the appellate Court under Section 148 of the NI Act. It is submitted that in light of the observations of Hon'ble Supreme Court, the learned Addl. Sessions Judge, Hisar has committed no error while passing the impugned order dated 09.09.2019.

9. I have heard learned counsel for the parties and perused the record.

10. To understand the issue, it will be necessary to consider Section 148 and 143-A of the NI Act as well as relevant judgments on the point:

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

"***143A.Power to direct interim compensation.*** *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—*

(a) in a summary trial or a summons case, where he pleads not

guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, 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.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section."

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11. A perusal of Section 148 of the NI Act would show that it starts with a non-obstante clause stating therein that "notwithstanding anything contained in the Code of Criminal Procedure 1973", in an appeal which has been filed against the conviction under Section 138 of the NI Act, the appellate Court has the power to ask the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation as awarded by the trial Court. Importantly, under sub-section (2) it has been mentioned that the amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order and the same is

subject to an extension of another 30 days and thus the maximum period provided for making the deposit is 90 days.

12. This very issue had arisen before the Hon'ble Supreme Court in ***Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi and another, 2020(1) R.C.R. (Criminal) 604*** wherein the Hon'ble Supreme Court has held that where a conditional order of suspension of sentence has been passed by the Appellate Court, on non-fulfilment of the condition, the suspension order can be vacated. Reference can be made to the following paras of the judgment, which are reproduced as under:-

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> "*15. The judgment of this Court which was delivered in the case of the present appellants i.e.**Criminal Appeal Nos.917-944 of 2019 (Surinder Singh Deswal @ Col. S.S. Deswal and others v. Virender Gandhi)** (in which one of us M.R. Shah, J was also a member) was also cited before the Bench deciding the case of G.J. Raja. This Court in its judgment dated 29.05.2019 has rejected the submission of the appellants that section 148 of N.I. Act shall not be made applicable retrospectively. This Court held that considering the Statement of Objects and Reasons of the amendment in section 148 of the N.I. Act, on purposive interpretation of 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.*
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> *17. The judgment of Punjab and Haryana High Court in Vivek Sahni and another(supra) which has been relied by the learned counsel for the appellants has been noted and elaborately considered by the High Court in the impugned judgment. In paragraph 14 and 15 of the impugned judgment of the High Court reasons have been given*

for distinguishing the Vivek Sahni' case.

18. The High Court is right in its opinion that question No.2 as framed in Vivek Sahni's case was not correctly considered. 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 noncompliance 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."

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13. The view of the Hon'ble Supreme Court, as can be derived from the extracts reproduced above, establishes the position that Section 148 of the NI Act is retrospective in nature. The words "*even in a case where the criminal complaints for the offence under Section 138 of the NI Act were filed prior to Amendment Act"* used by Hon'ble Supreme Court clearly and definitively confirm the position that in cases where a complaint case under Section 138 of the NI Act has been filed by the complainant prior to the enforcement of the amendment on 1st September, 2018, where the accused is convicted and subsequently, the convict

intends to file an appeal against the judgment and order of conviction, then the fact that the complaint case had been filed prior to the amendment will not create a bar on the applicability of Section 148 on the appeal filed after the amendment arising from such a complaint case. Remedy/relief under Section 148 will be available to the complainant against the convict/appellant for such cases, that is, where the complaint case pertains to a time prior to the amendment and introduction of Section 148 of the NI Act, even though the appeal pertains to a time post the amendment.

14. For deciding this question, it is deemed necessary to look into the purpose and intent of the legislature while passing the amendment, whereby, Section 143A and 148 were added to the NI Act. The Statement of Objects and Reasons for the amendment of NI Act is reproduced as under:-

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> *" The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.*
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> *2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so*

> *as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy."*

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15. The intention of the legislature is evident from a bare reading of the Statement. The purpose underlaid in the amendment of the Act is facilitation of speedy and effective disposal of matters initiated under the NI Act, specifically under Section 138. The second purpose is that the right to appeal is not misused at the expense of the complainant only to delay meeting the ends of justice. It has been observed that the convicts often obtain stay of order of sentence in the garb of filing an appeal and the proceedings in the appeal are kept pending for years and decades with no consequence and no relief for the complainant in any manner. The objective is to provide some measure of relief to the complainant in the event of stay of proceedings or any such other event. The aim of the legislature was also to avoid frivolous litigations and to save time, money and other resources of the Courts as well as the parties.

16. Keeping in view the objective of the amendment, it is proper to state that to avoid frivolous, unnecessary and unscrupulous litigations and proceedings, the Court concerned may take the required steps to ensure that the appellant has approached the Court with a genuine and real case against the order of conviction and is not wasting the time and resources of the judicial machinery only to delay his conviction and punishment thereof. The Hon'ble Supreme Court has held the provision in question, that is, Section 148 of the NI Act, to be retrospective in

nature and having applicability over complaints that have been filed prior to the amendment. This reflects the intention of the Hon'ble Apex Court to not extinguish the relief as intended to be granted to the complainant under Section 148. The interpretation may be construed to mean that any appeal which is emanating from a complaint filed prior to the amendment will fall within the ambit of the nature of cases as described by the Hon'ble Supreme Court and Section 148 would apply to such cases. The idea is also to give purposive interpretation to Section 148 to extend applicability to cases which were filed when the remedy was not available to the complainant under Section 148 of the NI Act.

17. In view of the above position, as settled by the Hon'ble Supreme Court in ***Surinder Singh Deswal's*** case (*Supra*), it has been established that the applicability of Section 148 of the NI Act will be extended to the appeals arising out of complaint cases that have been filed prior to the amendment, so there is no illegality or perversity in the order dated 09.09.2019 passed by the Court of learned Additional Sessions Judge, Hisar, and does not call for interference. Accordingly, the impugned order dated 09.09.2019 is held valid and upheld.

18. The present petition is dismissed with no order as to costs.

April 12, 2023 **(NAMIT KUMAR)**
mkkoundal **JUDGE**

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