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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-60897-2022 (O&M)
Date of Decision: 04.01.2023

M/S WHITE HORSE NETWORK SERVICES PVT.LTD., & ANR.

…Petitioners

Versus

STATE OF HARYANA & ANR.

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Manmohan Saroop, Advocate
for Mr. D.V. Dhindsa, Advocate
for the petitioners.

HARSH BUNGER, J.

The present petition under Section 482 of the Cr.P.C., has been filed by the petitioners seeking quashing of order dated 02.12.2022 (Annexure P-4) passed by the learned Sessions Judge, Panchkula in ***CRA/138/2022*** titled as ***M/s White Horse Network Services Pvt. Ltd. Vs State of Haryana and another***, whereby, the petitioner (appellant-convict) has been directed to deposit 25% of the compensation amount awarded by the trial Court in terms of provisions contained under Section 148 of the Negotiable Instruments Act, 1881 (for short `***N.I Act, 1881'***) (as amended up-to-date).

The brief facts of the case are that in October, 2017, respondent No.2-complainant (M/s YPT Entertainment House Pvt. Ltd.) filed a complaint under Section 138 of the *N.I Act, 1881*, stating therein that the complainant company is engaged in the business of broadcasting of General

Entertainment Channel/Non-news and current affairs and had entered into an agreement dated 27.06.2015 with petitioner No.1-Company, of which petitioner No.2-Mr. Panchapakesan Kailasam and one Mrs. Mythili Kailasam, were their Directors and were liable/responsible for the conduct of the affairs of petitioner No.1-Company. As per the abovesaid agreement, the content of petitioner No.1-Company was to be broadcasted on the television channel of the complainant-Company i.e. ***Kalki TV*** on an exclusive basis for a period of three years against monthly subscription of Rs.8,65,000/- plus taxes, which was to be paid by 10^{th} of every month. It was claimed in the complaint that despite availing the services of the complainant-Company, the corresponding payments were not made, resultantly, the complainant-Company disconnected the services of the petitioners/accused. It was further stated that in partial discharge of its liability, petitioner No.1-Company issued a cheque bearing No.001420 dated 09.05.2017 to the tune of Rs.50,00,000/- in favour of the complainant-Company and the said cheque was signed by petitioner No.2-Mr. Panchapakesan Kailasam, being Director of petitioner No.1-Company. In the complaint, it was claimed that as on 09.05.2017, a sum of Rs.80,53,641/- was due to the complainant Company. However, upon presentation of the aforesaid cheque, the same was returned for the reason of account closed. A legal demand notice dated 30.07.2017 was issued upon the petitioners-accused demanding payments and thereafter, the complaint under Section 138 of the N.I Act, 1881 was filed.

The proceedings of the aforesaid complaint under Section 138 of the N.I Act, 1881, ultimately resulted into passing a judgment of conviction and order of sentence dated 04.11.2022 and 09.11.2022, respectively, by the Judicial Magistrate Ist Class, Panchkula, whereby, petitioner No.2-Panchapakesan Kailasm (Director of M/s White Horse Network Services) was sentenced to undergo simple imprisonment for a period of two years for the commission of offence punishable under Section 138 of the N.I Act, 1881 and the period of detention already undergone by him was ordered to be set off against the substantive sentence passed by the Court. However, in pursuance of Section 357(3) Cr.P.C., petitioner No.2 was directed to pay compensation of 1.5 times of the cheque amount i.e. Rs.50,00,000/- and he was also ordered to pay the amount of compensation to the complainant within a period of two months of passing of the order and if he does not make the payment of compensation, then the complainant was granted liberty to move appropriate application for realization of the amount of compensation. However, in default of payment of compensation, the convict was further directed to undergo simple imprisonment for a period of two months and no fine was imposed upon him.

Aggrieved by the aforesaid judgment of conviction and order of sentence dated 04.11.2022 and 09.11.2022, respectively, the petitioners preferred an appeal bearing No.***CRA/138/2022*** before the learned Sessions Judge, Panchkula, which came up for consideration on 02.12.2022, whereupon notice was issued and the trial Court record was ordered to be requisitioned. The application for bail by suspending the impugned sentence was also considered on the said date and the learned Sessions Judge, Panchkula, admitted petitioner No.2 to bail on furnishing bail bonds in the sum of Rs.1,00,000/- with one surety of like amount to the satisfaction of the said Court till pendency of the appeal and in the meantime, the sentence was ordered to remain suspended. Further, in view of Section 148 of the N.I Act, 1881, the learned Sessions Judge, Panchkula, vide order dated 02.12.2022, directed the petitioners to deposit 25% of the total compensation amount i.e. Rs.18,75,000/- before the said Court either by way of Bank Demand Draft or by way of bank guarantee in favour of respondent No.2-complainant/Company on or before the date fixed i.e. 09.01.2023, failing which, it was ordered that the bail shall be liable to be cancelled.

The instant petition has been filed challenging the said order dated 02.12.2022 (Annexure P-4) passed by the learned Sessions Judge, Panchkula.

Learned counsel for the petitioners has submitted that the impugned order qua deposit of 25% of the compensation amount awarded by the Appellate/Sessions Court has been ordered to be deposited within 38 days from the date of passing of the order, which is wrong, illegal and against the provisions of Section 148 of the N.I Act, 1881. It is further submitted that the Appellate Court while granting bail under Section 389 of the Code of Criminal Procedure 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. It is further submitted that the directions to make a deposit in terms of Section 148 of the N.I Act, 1881, should not be beyond 20% of the compensation or fine. It is accordingly prayed that the impugned order may be quashed to the extent whereby the petitioners have been directed to deposit 25% of the compensation amount awarded by the trial Court.

I have heard learned counsel for the petitioners and have perused the paper book as well as impugned order dated 02.12.2022 (Annexure P-4) passed by the learned Sessions Judge, Panchkula.

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 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.*
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> *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.

Recently, 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.*"

In view of the aforesaid discussion, there is no force in the submissions of learned counsel for the petitioners that the Appellate Court while granting bail under Section 389 of the Code of Criminal Procedure 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. There is also no merit in the submission that the direction to make a deposit in terms of Section 148 of the N.I. Act, 1881, cannot be beyond 20% of the compensation or fine as directed by the Appellate Court. A mere reading of Section 148(1) of the N.I. Act, 1881 leaves no manner of doubt that the provisions envisages deposit of a sum of minimum twenty per cent of the final compensation awarded by the trial

Court. In view of the clear language of Section 148(1) of the N.I. Act, 1881, there is no merit in the submissions of learned counsel for the petitioners that the deposit cannot be beyond 20%.

As regards the submission that petitioner has been directed to make deposit 25% of the compensation awarded by the trial Court within 38 days, suffice it to say that as per the provisions of Section 148(2) of the N.I. Act, 1881, the amount referred to in sub-section (1) of Section 148 of the N.I. Act, 1881 is to be deposited within a period of 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.

Accordingly, this Court does not see any reason to interfere with the impugned order dated 02.12.2022 (Annexure P-4) passed by the learned Sessions Judge, Panchkula. ***There is no illegality or perversity in the order dated 02.12.2022 (Annexure P-4) and present petition, being devoid of any merit, is hereby dismissed*** with the clarification that in terms of the provisions contained under Section 148(2) of the N.I Act, 1881, the petitioner shall be entitled to deposit the said amount within a period of 60 days from the date of passing of order dated 02.12.2022 (Annexure P-4) by the learned Sessions Judge, Panchkula.

Janaury 04, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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

GURPREET KAUR
2023.01.19 23:10
I attest to the accuracy and
authenticity of this order/judgment