

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

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CRM-M-54625-2019 (O&M)
Date of decision: 08.05.2023

Rakesh Kumar Sharma

....Petitioner

Versus

Prabhjot Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Namit Gautam, Advocate
for the petitioner
None for the respondent

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 Cr.P.C. for setting aside the impugned order dated 25.11.2019 passed by learned Additional Sessions Judge, Amritsar in Criminal Appeal No.651 of 2019 in complaint case No.1675 of 2017 dated 10.04.2017, whereby petitioner was ordered to deposit 20% of compensation amount that was imposed, under Section 148 Negotiable Instruments Act, 1881, while suspending the sentence by learned trial Court within one and half month.

2. Learned counsel submits that a condition for the grant of bail cannot be made onerous for the petitioner. The appellate Court has committed an error as there is no provision for imposing any condition while granting the suspension of sentence. Still further, the non-deposit of compensation cannot be a ground for vacation of the order granting suspension of sentence under the Negotiable Instruments Act, 1881. He contends that once the appeal against the order of

conviction preferred is pending, it should be heard on its merit, without insisting on the deposit of the amount as directed by the Court as fine is not recoverable as per Section 357(2) Cr.P.C. Reliance is placed on the judgments in the case of **Vivek Sahni v. Kotak Mahindra Bank Ltd.**, 2019 SCC OnLine P&H 2668, **Ajay Vinodchandra Shah and others vs. State of Maharashtra and others**, 2019 ACD 399 and **Dilip S.Dahanukar vs. Kotak Mahindra Co. Ltd.**, (2007) 6 SCC 528.

3. Though, none has put appearance on behalf of the respondent but in the reply filed by her, it has been stated that the appellate Court has rightly passed the impugned order under Section 148 NI Act, imposing the condition to deposit 20% of the compensation amount. To support the same, reference was made to Hon'ble The Supreme Court judgment in case of **Surinder Singh Deswal v. Virender Gandhi**, (2019) 11 SCC 341.

4. Heard.

5. The core question that emanates in this petition for determination is "Whether on account of non-payment of the amount as directed under Section 148 of the Negotiable Instruments Act, 1881, suspension of sentence granted to the appellant will be automatically or consequentially cancelled?"

6. Before delving upon the merits of the case, it would be apposite to advert to the relevant statutory provision involved, which reads thus:

“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 subsection 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.”

7. At the outset, it may be accentuated that the Objects and Reasons of Section 148 of NI Act being brought into force by the Act No. 20 of 2018 w.e.f. 01.09.2018, spelt out that when a person convicted under Section 138 NI Act, prefers an appeal, Section 148 NI Act enjoins upon the Court, to order deposit of a minimum 20% of the amount of fine or compensation awarded. The provision begins with the non-obstante clause which gives it an overriding effect over the provisions of the Code, insofar as they are inconsistent with the said provision.

8. A profitable reference can be made to the judgment in case of **Surinder Singh Deswal v. Virender Gandhi**, (2019) 11 SCC 341 (hereinafter referred to as the “1st judgment”), by Hon’ble The Supreme Court of India, while expounding the word 'may' used in the aforesaid provision to be construed as a rule

or shall keeping in view the statement of objects and reasons of amending the said section. Para as relevant in this regard reads thus:-

“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.”

9. In the aforesaid judgment, while considering a number of judgments including **Dilip S.Dahanukar** (supra), it was in no uncertain terms explicitly observed and held thus:

“...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 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...

...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.

...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.”

10. It was thus, unequivocally observed and held in the case of **Surinder Deswal** (1st judgment), that on considering the Statement of Objects and Reasons of the amendment in Section 148 N.I. Act and on a purposive interpretation thereof, this Section as amended, shall be applicable even in respect to the appeals against the order of conviction and sentence for the offence under Section 138 of NI Act, and also where the criminal complaints were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018 and if such a purposive interpretation is not adopted, then in that case, the object and purpose of amendment in Section 148 would be frustrated. The amended provision confers the 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. A further interpretation to the language of the provision considering the amended Section 148 of the Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the Act, was given that the word "may" used in the amendment, to be construed as a "rule" or "shall" and in case the appellate Court was not to order to deposit, that would be as an exception, for which special reasons are to be assigned.

11. In case **Surinder Singh Deswal @ Col. SS Deswal vs. Virender Gandhi and another**, (2020) 2 SCC 514 (hereinafter referred to as the "2nd judgment"), the appellant therein raised the contention that the order granting suspension of sentence cannot be vacated due to non-deposit of 25% of the amount of compensation, which came to be rejected while considering the judgment in the case of **Vivek Sahni** (supra), as also relied by the learned counsel for the petitioners in these cases and it was categorically held thus:

"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 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.”

12. As is exposition of law, indubitably the Appellate Court as a matter of rule has to by way of the power vested in it, direct an appellant, who has filed an appeal against the judgment of conviction under Section 138 of NI Act and the order of sentence, to deposit a minimum of 20% of the fine or compensation so awarded by the trial Court.

13. The submission of the petitioner by citing **Dilip S.Dahanukar** (supra) regarding Section 357(2) Cr.P.C., was considered in the case of **Surender Deswal** (1st judgment) decided on 29.05.2019, wherein, it was observed that, “ 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.

14. Similarly, with regard to the judgment in the case of **Ajay Vinodchandra Shah** (supra), it too was considered by Hon'ble The Supreme Court in the case of **Surender Singh Deswal** (2nd judgment) and held it to be not laying down good law, thus the reliance thereon also by the petitioners does not help them to further their submission, the relevant para reads thus:

20. "Insofar as the judgment of the Bombay High Court in Ajay Vinodchandra Shah (supra) which has been relied by the learned counsel for the appellant, it is sufficient to observe that the High Court did not have benefit of judgment of this Court dated 29.05.2019 in Surinder Singh Deswal's case. The judgment of the Bombay High Court was delivered on 14.03.2019 whereas judgment of this Court in appellants' case is dated 29.05.2019. In view of the law laid down by this Court in Surinder Singh Deswal's case decided on 29.05.2019, the judgment of Bombay High Court in Ajay Vinodchandra Shah's case cannot be said to be a good law insofar as consequences of non-compliance of condition of suspension of sentence is concerned."

15. The appellant, who having been convicted under Section 138 of NI Act, is to part with an amount of fine/compensation, pending the appeal, which in no way can be construed to be unfair and unreasonable or amount to taking away of his substantive right.

16. As has been observed in the afore-referred judgments, the delay has compromised the sanctity of the cheque transactions, the appellant making attempts to evade liability and causing grievance to the complainant, thus for such reasons, the Parliament thought it fit to amend Section 148 of the N.I. Act. The Appellate Court has the power to impose the condition of deposit a part of compensation while suspending suspension of sentence and on non-deposit, the

same would either automatically be vacated, if provided in the order or the said order of suspension of sentence on non-deposit of said amount can be vacated. Any other interpretation of the said provision, that the amount so ordered to be deposited can be recovered as fine under Section 421 Cr.P.C., would lead to frustrating the very object and purpose of the amendment. This Court is of the considered view that the appellate Court has rightly directed the petitioner to pay 20% of the compensation amount in terms of the provisions of NI Act.

17. In view of the above discussion, the issue as having arisen in the present case, stands decided against the petitioner. Consequently, the present petition is hereby dismissed being bereft of merit.

(AMAN CHAUDHARY)
JUDGE

May 08, 2023
M.Kamra

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No