

CRM-M-62553-2023
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-62553-2023 (O & M)
Date of decision: 13.12.2022

Jaswinder Pal

.... Petitioner

V/s

Resham Singh and anr.

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Davinder Singh Saini, Advocate, for the petitioner.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of order dated 03.10.2023 (Annexure P-2) passed by the Additional Sessions Judge, SBS Nagar in CRA-168/2023 titled as 'Jaswinder Pal versus Resham Singh', arising out Complaint No.NACT-448/229, under Section 138 of the Negotiable Instruments Act, vide which a condition had been imposed upon the petitioner to deposit 20% of the total amount of the compensation awarded by the Trial Court within a period of 60 days in the absence of which his order of suspension of his sentence would stand vacated.

2. The brief facts of the case are that the petitioner came to be convicted under Section 138 of the Negotiable Instruments Act and was sentenced to rigorous imprisonment for a period of one year and was directed to pay the compensation amount of Rs.10,45,000/- to the respondent No.1 vide a judgment dated 05.09.2023. A copy of the judgment dated 05.09.2023 is attached as Annexure P-1 to the petition.

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3. The petitioner preferred an appeal alongwith an application for suspension of sentence. The appeal was admitted and the sentence of the petitioner was ordered to be suspended on 03.10.2023 with the condition that the petitioner was to deposit 20% of the total amount of compensation awarded within 60 days failing which his order of suspension of sentence would stand automatically vacated. A copy of the order dated 03.10.2023 is attached as Annexure P-2 to the petition.

4. It is this order which is under challenge in the present petition.

5. The learned counsel for the petitioner contends that Sections 143-A and 148 of the Negotiable Instruments Act do not provide for cancellation of bail on account of non-deposit of the amount. Onerous conditions could not have been imposed by the Court for the grant of bail to the petitioner. The petitioner being a vegetable vendor did not have the financial capacity to deposit the 20% amount as ordered. The complainant had failed to prove that the cheque had been issued by the petitioner for the discharge of his legal liability. Though the alleged amount of Rs.7,50,000/- had been paid to the accused by the complainant, the cheque for an amount of Rs.10,25,000/- had allegedly been dishonoured. He, therefore, contends that the conditional order dated 03.10.2023 was liable to be set aside and the condition for depositing an amount of 20% of the compensation amount was liable to be quashed.

6. I have heard the learned counsel for the petitioner.

7. In ***‘Surinder Singh Deswal @ Col. S.S. Deswal and others versus Virender Gandhi, 2019(3) RCR (Criminal) 186’***, the Hon’ble Supreme Court has held as under:-

“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., 1973 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 section [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., 1973 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., 1973 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.

In view of the above and for the reasons stated herein above, impugned Judgment and Order passed by the High Court does not call for any interference”.

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8. In view of the aforementioned judgment, it is apparent that the Court was well within its powers to pass the impugned order dated 03.10.2023 (Annexure P-2). The grounds raised by the petitioner/convicted accused are generic in nature and would be available to every convict who would come to the Court and plead the same thereby rendering Section 148-A of the Negotiable Instruments Act toothless.

9. In view of the above, I find no merit in the present petition. The same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

December 13, 2023
sukhpreet

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