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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 1414/2022**

M/S SHAKUMBHARI STRAW PRODUCTS LTD & ANR.

..... Petitioners

Through: Mr.Ravinder Kumar, Advocate
(through VC)

versus

M/S JAGRAN PRAKASHAN LIMITED

..... Respondent

Through: Ms.Poonam Atey, advocate

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Date of Decision: 04.05.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been moved challenging the order dated 22.02.2022 whereby learned Addl. Sessions Judge after taking into account the purport of Section 148 of the Negotiable Instruments Act *inter alia* held as under:

“13. Accordingly, in light of law discussed above, power under Section 148 of N.I.Act can be exercised not only at the time of suspension of sentence but at any time during the pendency of the appeal and hence, it cannot be contended that once the sentence has already been suspended, section 148 of the N.I.Act cannot be invoked at a subsequent stage during pendency of the appeal.



14. In view of the above discussion, in accordance with Section 148 of the N.I.Act the appellants are directed to deposit 20% of the amount of fine by way of an FDR in the name of the court within one month from today. The application is accordingly disposed of.”

2. Learned counsel for the petitioner submits that earlier while suspending the sentence on 06.07.2021, learned ASJ had taken into account the arguments made by the petitioner that the interest of complainant/respondent was protected as some of the properties of the petitioners were already mortgaged with complainant/respondent and after considering these submissions, the sentence was suspended. He submits that therefore the order dated 22.02.2022 passed under Section 148 N.I.Act and the direction to deposit 20% of the sum of the fine amounts to review of an order that is not permissible under the law. Learned counsel submits that the order dated 22.02.022 is erroneous in law and is liable to be set aside.
3. Learned counsel for the respondent has submitted that the impugned order cannot be termed as a review of the earlier order dated 06.07.2021 as alleged by the petitioner. She submits that both the orders dated 06.07.2021 and 22.02.2022 are independent and the contents of the section 148 N.I.Act were never discussed in the application while suspending the sentence thus the impugned order cannot be termed as recall/alteration/modification of order dated 06.07.2021 by the impugned order.
4. I have heard the submission of both parties and perused the material on record.



5. I consider that the argument of the learned counsel for the petitioner is liable to be rejected. The order dated 06.07.2021 does not speak about Section 148 N.I.Act at all . In fact, no such plea was even raised at that time of suspending the sentence. Learned ASJ in the subsequent order dated 22.02.2022 has passed a reasoned order *inter alia* stating that the order under Section 148 N.I.Act can be passed even after the suspension of the sentence. In this regard reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Surender Singh Deswal v. Virender Gandhi***, 1019 (11) SCC 341 and judgment passed on 22.06.2022 passed by the Himachal Pradesh High Court, Shimla in Cr.MMO No. 14 of 2016 titled as ***Lalit Kaushal & Anr.V. Yadvinder Kaushal***.
6. Taking into account the totality of facts and circumstances, I do not find any illegality or perversity in the impugned order dated 22.02.2022. The petition is accordingly dismissed.

DINESH KUMAR SHARMA, J

MAY 4, 2023

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