

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107.

CRR No.259 of 2024 (O&M)
Date of Decision:07.02.2024

Shingara Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Yaseen Sethi, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed challenging the order dated 20.11.2023 whereby while allowing the application filed under Section 389 Cr.P.C. by the petitioner seeking suspension of sentence, the learned Additional Sessions Judge, Kapurthala ordered him to deposit 5% of the compensation of Rs.3,50,000/- i.e. equal to the amount of cheque, awarded by the learned trial Court.

2. In brief, facts of the case are that respondent No.2 filed a complaint against the petitioner under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as the NI Act) on the ground that the petitioner borrowed a sum of Rs.3,50,000/- from him and in order to discharge his legal liability, issued a cheque bearing No.735959 dated 20.02.2019 for an amount of Rs.3,50,000/-. However, on presentation for encashment, the said cheque was dishonoured and returned with remarks 'funds insufficient'. The petitioner was convicted vide judgment dated 19.10.2023 passed by the Sub Divisional Judicial

Magistrate, Sultanpur Lodhi and sentenced to undergo rigorous imprisonment for a period of 2 years with a direction to pay compensation equal to the cheque amount as per the provisions of Section 357 (3) Cr.P.C vide order of event date passed on quantum of sentence. Aggrieved against the aforesaid judgment, the petitioner preferred an appeal before the Additional Sessions Judge, Kapurthala and also moved an application seeking suspension of sentence imposed upon him. The learned Additional Sessions Judge, Kapurthala while allowing the said application vide order dated 20.11.2023 directed the petitioner to deposit 5% of the amount of compensation awarded by the learned trial Court. Aggrieved against the said order, petitioner approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner *inter alia* contends that the impugned order dated 20.11.2023 is not sustainable, as the learned lower Appellate Court cannot impose any condition while granting bail/ordering suspension of sentence. It is further contended that provisions of Sections 143 and 148-A of the NI Act do not provide that if payment as ordered by the lower Appellate Court is not deposited, the concession of bail shall be liable to be cancelled. In support of his contentions, he relies upon the judgment passed by the Hon'ble Supreme Court in ***Vivek Sahni and another Vs. Kotak Mahindra Bank Ltd. 2009 (4) RCR Cr. 614.***

4. Having heard learned counsel for the petitioner and after perusing the record, this Court finds no force in the arguments advanced by the counsel appearing for the petitioner. Section 148 of the N.I. Act starts with a non-obstante clause stating 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 N.I. Act, the lower Appellate Court has the

power to direct the appellant-accused to deposit such amount, which shall be a minimum of 20% of the fine or compensation as awarded by the trial Court and the said amount shall be deposited within sixty days from the date of the order, subject to an extension of another 30 days, thus, the maximum period provided for making the deposit is 90 days. Further, the judgment relied upon by the petitioner in *Vivek Sahni's case* (supra), has already been distinguished by Coordinate Benches of this Court in *M/s Ajju Mines and Minerals and another vs. M/s. JSC Ispat Private Limited and another 2021(2) RCR (Criminal) 598; Ram Singh vs. Tek Chand 2020 (2) RCR (Criminal) 448* and the judgment passed in CRM-M-37048-2021 titled as *Harwinder Singh Vs. Mohan Lal* decided on 10.11.2021.

5. A two Judge Bench of the Hon'ble Supreme Court in *Surinder Singh Deswal @ Col. S.S. Deswal vs. Virender Gandhi (2019) 11 SCC 341* while speaking through Justice M.R. Shah has held as under:-

“7. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the NI Act were lodged/filed before Amendment Act 20 of 2018 by which Section 148 of the NI Act came to be amended and therefore amended Section 148 of the NI 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 NI Act were preferred, Amendment Act 20 of 2018 amending Section 148 of the NI Act came into force w.e.f. 1-9-2018. Even, at the time when the appellants submitted application(s) under Section 389 Cr.PC to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the NI Act came into force and was brought on statute w.e.f. 1-9-2018. Therefore, considering the object and purpose of the amendment in Section 148 of the NI Act and while suspending the

sentence in exercise of powers under Section 389 CrPC, 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 NI Act.

7.1. 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 NI Act was being frustrated, Parliament has thought it fit to amend Section 148 of the NI Act, by which the first appellate court, in an appeal challenging the order of conviction under Section 138 of the NI Act, is conferred with the power to direct the convicted appellant-accused 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 NI Act, it cannot be said that any vested right of appeal of the appellant-accused has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the NI 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 NI Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in Garikapati Veeraya [Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540] and Videocon International Ltd. [Videocon International Ltd. v. SEBI, (2015) 4 SCC 33], 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 NI Act stated hereinabove, on purposive interpretation of Section 148 of the NI Act as amended, we are of the opinion that Section 148 of the NI 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 NI Act, even in a case where the criminal complaints for the offence under Section 138 of the NI Act were filed prior to Amendment Act 20 of 2018 i.e. prior to 1-9-2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the NI 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 NI Act, as amended.

6. In view of the aforesaid facts and circumstances, no ground for interference is made out. Consequently, the impugned order dated 20.11.2023 is upheld and the instant petition stands dismissed. Since the time of ten days granted by the learned lower Appellate Court for depositing 5% of the compensation as condition precedent while suspending the sentence of the petitioner has already elapsed, the petitioner will be at liberty to file an application seeking extension of time for depositing the aforesaid amount as per the provisions of Section 148 of the N.I. Act within a period of two weeks from the date of receipt of certified copy of this order, which will be considered by the lower Appellate Court in accordance with law.

(HARPREET SINGH BRAR)
JUDGE

February 07, 2024
Pankaj*

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