2024:PHHC:066450

127 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16786-2024
DECIDED ON: 05.04.2024

AMARESHWAR SINGH

.....PETITIONER

VERSUS

STATE BANK OF INDIA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. Gaurav Goel, Advocate
for respondent-Bank.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 482 Cr.P.C., for quashing of the order dated 06.02.2024 (Annexure P-1) passed by the Additional Sessions Judge, Fatehgarh Sahib whereby the petitioner was directed to deposit 20% of the compensation amount awarded by trial Court within 60 days.

2. The only argument raised by learned counsel for the petitioner, to assail the impugned order dated 06.02.2024 (Annexure P-1) is that it is an order, where no reasoning has been given by the Lower Appellate Court, while issuing notice in the appeal and suspending the sentence of the appellant/petitioner during the pendency of appeal subject to deposit 20 % of the compensation amount within

a period of 60 days from that date and, therefore, the same is liable to the quashed being not tenable in the eyes of law.

3. In support of his argument, he has placed reliance upon a judgment passed by the Apex Court in ***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. & Ors., reported as 2023(4) RCR Criminal 296*** referring to the observations made therein, which reads as under:-

> *"6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.*
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> *7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.*
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> *8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.*
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> *9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he*

> *normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not.*
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> *10. In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.*
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> *11. The learned counsel appearing for the appellants, at this stage, states that the appellants have deposited 20% of the compensation amount. However, this is the matter to be examined by the High Court.*
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> *12. In these circumstances, we set aside the impugned orders of the High Court and restore the revision petitions filed by the appellants before the High Court. We direct the parties to appear before the roster Bench of the High Court on 09.10.2023 in the morning to enable the High Court to fix a date for hearing of the revision petitions. As the contesting parties are before the Court, it will not be necessary for the High Court to issue a notice of the date fixed for hearing."*

4. This Court after having heard learned counsel for the petitioner with respect to the rationality of the order passed by the Lower Appellant Court in not giving any reason for depositing 20 % of compensation amount, is of the view that no doubt that it is a statutory liability under Section 148 of Negotiable Instruments Act, which is enforceable by the Lower Appellate Court and has been very justifiably so ordered, therefore, this Court does not press for further reasoning to be mentioned in the order as to why 20 % compensation amount is to be deposited, rather the onus would be upon the petitioner-appellant to make out a case of an exception, if at all to show his inability to deposit the 20 % of compensation amount, that too once he has been proved guilty and convicted by the trial Court for

the offence under Section 138 of Negotiable Instruments Act, whereby cheque amounting to Rs.6,59,612/- issued by him was dishonoured.

5. Even before this Court, no such reason has been stated by learned counsel for the petitioner during the course of hearing or in the petition so pleaded at all that his case is covered under the ratio of ***Jamboo Bhandari's case***, wherein the Apex Court has made it abundantly clear that Appellate Court will be justified in imposing the condition of deposit as provided under Section 148 of Negotiable Instruments Act, but only in a case, if it is satisfied that condition of such deposit will be unjust or imposing of such condition will amount to deprivation of right to appeal of the appellant, an exception can be made with the reason specifically recorded.

6. "In ***Rajni Dhingra vs. Sanjeev Chugh (CRM-M-28681-2022)*** decided on 11.08.2023, this Court dealt with the similar issue in extenso wherein this Court took note of the relevant provisions of the newly added Section 143-A and 148 of the NI Act, to say that while Section 143-A empowers the trial court to direct the accused to pay an interim compensation not more than 20% of the cheque amount, Section 148 gives power to the appellate court to direct the accused to deposit minimum of 20% of fine or compensation awarded by the trial court.

7. This Court considered the question of validity for imposing the restriction to deposit 20% of the compensation amount as a pre-requisite for suspending the sentence on the touchstone of the decision in "***Surinder Singh Deswal @ Col. S.S. Deswal & Ors. Vs. Virender Gandhi*" *(2019) 11 SCC 34,*** wherein the Apex Court, after having considered the provisions of Section 148 of the NI Act and the objects and reasons for its enactment by way of Amendment No.20/2018, held that the power of the Appellate Court in directing the accused to

deposit more than 20% of the fine is mandatory in nature and as such upheld such stipulation for suspension of sentence. The relevant portion of ***Rajni Dhingra*** reads as under:-

> *"21. It is also well known to this Court that certain unscrupulous and notorious drawers of the dishonored cheque have been misusing the procedural delay to their advantage after obtaining stay on the proceedings which only frustrates the basic object and reason of incorporation of Section 138 of the Negotiable Instruments Act, 1881. The amendment in Section 148 of the said Act has been cautiously effected primarily having at the back of mind to expedite the disposal of proceedings under the Negotiable Instruments Act and by no stretch of discussion, it could be said that the substantive right of appeal of the accused-appellant has been taken away/or effected.*
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> *22. Further the Apex Court in Surender Singh Deswal (supra) has observed that amended Section 148 of NI Act, 1881 has purposively interpreted in such a manner it is done so as to provide, inter alia, speedy disposal of cases considering the fact that once after easy filing of the appeals and obtaining stay in the proceedings, injustice creep in to the payee of a dishonored cheque, who is forced to spend considerable time and resources in litigation to realise the value of the cheque resultantly compromise the sanctity of the cheque transaction.*
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> *23. In the light of discussions made hereinabove and the case law Surender Singh Deswal (supra), the petitions hereby are dismissed being devoid of merits. The petitioners-accused are directed to deposit the amount as ordered by the Lower Appellate Court within the stipulated time of 60 days, which may be further extended by 30 days.*
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> *24.It is however further made clear that the period of 60 days shall now be counted from the date a certified copy of the order received by the trial Court."*

8. In the light of above discussions as well as observations made in ***Rajni Dhingra's case (supra)***, the reasoning given by the Lower Appellate Court would

only be a case, where the Court has to grant an exception from deposit of such 20 % compensation amount, which is a prerequisite for entering into an appeal under Section 148 of Negotiable Instruments Act of the amount awarded by the trial Court under Section 357(3) Cr.P.C., and not to record reasons, wherein it is an obligation as per the provisions of Negotiable Instruments Act itself and hence such an argument does not hold good and is not acceptable.

9. Accordingly, in view of the reasons recorded hereinabove, the present petition stands dismissed being devoid of any merits with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

05.04.2024
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*