

CRM-M-22392-2024

2024:PHHC:063067

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

143

CRM-M-22392-2024
Decided on: 06.05.2024

Sukhdev Singh ...Petitioner

Versus

M/s Mohindra Trading Company through its Proprietor ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vishal Mittal, Advocate for the petitioner.

ANOOP CHITKARA, J.

Criminal Complaint	NIACT/357-2018 u/s 138 of Negotiable Instrument Act CNR No.PBSM030009632018
Criminal Appeal	CRA/41/2024 CNR No.PBSM01-000718-2024

Aggrieved by the direction of the trial court passed on an application moved under section 143-A of Negotiable Instruments Act, 1881 (NIA), to deposit 20% of the cheque amount, the accused has come up before this court.

2. The nature of order this court proposes to pass, no actual prejudice would be caused to the complainant; as such neither notice is being issued to it nor its response is required.
3. Vide order dated 01.02.2024, the petitioner was convicted for commission of offence under Section 138 of Negotiable Instruments Act, 1881 (for short N.I. Act). Feeling aggrieved, they had challenged the same before the Sessions Court. While suspending the sentence, vide order dated 22.02.2024, Sessions Judge, Muktsar, directed the appellant to deposit 20% of the compensation amount within 60 days.
4. Section 148 of the N.I. Act was amended and w.e.f. 01.09.2018 Section 148 was inserted. As per Section 148 of N.I. Act, it is within the powers of the appellate Court to order payment pending appeal against conviction. As per Section 148(1), the Appellate Court can do the same on its own without there being any application filed by the complainant.

5. The accused-petitioner has placed his assets and liabilities on record, which prima facie shows the incapacity to deposit. Given this, in the more significant interests of Justice, Equity, and Fair play, the impugned order shall remain stayed till 31.07.2024. In the meantime, appellant Court procedure is expedited. The Appellate court is requested not to grant any adjournment to the parties. It is clarified that if the convict-petitioner is unable to appear then he may file application for exemption however his counsel shall appear and argue the matter. It is further clarified that petitioner shall not claim any prejudice that he was not present at the time of arguments. In case, petitioner's counsel does not address arguments, in that case, this order shall stand re-called automatically under section 362 read with 482 of CrPC, without any further reference to this court, and the stay on order shall also stand vacated.

6. In Surinder Singh Deswal v. Virender Gandhi, 2019 LawSuit(SC) 1245, Hon'ble Supreme Court holds,

[8] It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which Section 148 of the N.I. Act came to be amended and therefore amended Section 148 of the N.I. 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 N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I. Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in Section 148 of the N.I. Act and while suspending the sentence in exercise of powers under Section 389 of the Cr.P.C., 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 N.I. Act.

7. Given above, there is no merit in the petition. However, the interest of justice would suffice if the appeal pending before the appellate Court is taken on the priority. This Court requests the learned Appellate Court to decide these appeals on top priority preferably on or before 31.07.2024.

8. Petitioner and the Registry to communicate the order to the concerned court. The petitioner/convict is directed to appear before the trial court on 16.05.2024 and after that on each date.

9. The petition is party allowed with the aforesaid observations. All pending applications, if any, stand disposed of. It is clarified that the Appellate Court shall proceed to decide the appeals notwithstanding even if 20% of the compensation amount is not deposited by the appellant till 31.07.2024. However, in case, the appellant seeks any adjournment, then it shall be open for the Appellate Court to appoint a legal aid counsel and to hear the appeal on merits.

(ANOOP CHITKARA)
JUDGE

06.05.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.