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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29319-2024
Date of Decision:- 12.07.2024

M/S JOTINDRA STEEL AND TUBES LTD.Petitioner

Vs.

M/S HARYANA STEEL MONGERS AND ORS. ...Respondents

(2) CRM-M-29159-2024

M/S JOTINDRA STEEL AND TUBES LTD.Petitioner

Vs.

M/S HARYANA STEEL MONGERS AND ORS. ...Respondents

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr N.P. Singh, Advocate and Mr. Dinesh Kumar Choudhary,
Advocate for the petitioner in both cases.

Mr. Charanjit Singh Bakshi, Advocate for the respondent Nos.1
to 3.

AMARJOT BHATTI, J. (Oral)

1. Petitioner - M/s Jotindra Steel and Tubes Limited through its authorised representative Mr. Gopal Gupta has filed aforesaid petitions under Sections 482 Cr.P.C. for quashing of order dated 21.03.2024 (Annexure P-1) passed by learned Additional District and Sessions Judge-1, Faridabad in CRA-480-2023 dated 16.12.2023 and CRA-479/2023 dated 16.12.2023 both titled as “M/s Haryana SteelMongers Private Limited & Others Vs. M/s Jotindra Steel & Tubes Limited” whereby the



learned Court has reviewed its order dated 16.12.2023 by reducing the amount of compensation to be deposited from 20% to 5% as provided under Section 148 of Negotiable Instruments Act, 1881 (in short 'NI Act') and order dated 06.04.2024 (Annexure P-2) whereby the learned Court has denied to release the amount deposited by petitioner during the pendency of appeal in violation to the provisions of Section 148 (3) of NI Act in the aforesaid appeals. Both petitions are taken up together for disposal with the consent of parties as matter in controversy in both cases is the same. For the convenience of this Court document exhibited in CRM-M-29319-2024 are taken up for discussions.

2. As per facts of the case, Haryana Steel Mongers Private Limited and others filed criminal appeal under Section 374 (3) of Cr.P.C. against judgment of conviction dated 18.11.2023 and order of sentence dated 30.11.2023 passed by learned Judicial Magistrate 1st Class, Faridabad in complaint under Sections 138/141 of NI Act titled as Jotindra Steel and Tubes Limited Vs. Haryana Steel Mongers Private Limited and others. Copy of grounds of appeal in the aforesaid case is Annexure P-3. Appellants/Convicts filed application for suspension of sentence and bail which was disposed of vide order dated 16.12.2023 (Annexure P-4). As per this order, sentence awarded to appellants/convicts by the learned trial Court was suspended on furnishing bail bonds and surety bonds subject to the condition to deposit 20% of compensation amount within a period of one month as detailed therein. Subsequently, appellants/convicts filed application under Section 389 Cr.P.C. for suspension of compensation amount as per order dated 16.12.2023. Said application is Annexure P-5. Application was disposed of by passing impugned order dated 21.03.2024



(Annexure P-1) vide which earlier order dated 16.12.2023 was modified to the extent that appellants were directed to deposit 5% of compensation amount instead of 20% of compensation amount as ordered earlier. On the deposit of said amount, application was moved by respondent/complainant i.e. petitioner in this case for release of amount which was declined vide order dated 06.04.2024. Feeling aggrieved of order dated 21.03.2024 (Annexure P-1) and order dated 06.04.2024 (Annexure P-2), present petitions for quashing have been filed.

3. Learned counsel for the petitioner/complainant argued that learned First Appellate Court by passing impugned order dated 21.03.2024 has reviewed its own order dated 16.12.2023 which is not permissible under the law. Furthermore order dated 06.04.2024 passed by learned First Appellate Court declining prayer of present petitioner to disburse the amount in their favour, is in complete contravention of Sub-Section 3 of Section 148 of NI Act. Both orders are in violation of express provisions of Section 148 of NI Act. In case the respondents/appellants had any grievance regarding order dated 16.12.2023 (Annexure P-4) they could have assailed the said order by approaching higher Court. Learned First Appellate Court had no power to review its own order by reducing the amount of compensation from 20% to 5% without recording any specific reason. First Appellate Court could not deny the release of amount in favour of present petitioner/complainant. It is submitted that impugned order dated 21.03.2024 (Annexure P-1) reducing the amount of compensation to be deposited by the appellants/convicts as well as impugned order dated 06.04.2024 declining the application filed by the present petitioner/complainant regarding release of amount may be



quashing by accepting the present petitions.

4. On the other hand, learned counsel for the respondents/convicts argued that petitions filed by petitioner are without merits. Learned First Appellate Court rightly appreciated legal position while allowing applications by passing impugned order dated 21.03.2024 in both cases. Said orders were passed by relying upon the judgments of Coordinate Bench in case titled as **Amit Kumar (Deceased) through his LR's mother Smt. Sushila Devi Vs. State of Haryana and another, [CRM No.20603 of 2022 in CRM-M No.4244 of 2022] decided on 06.07.2022** and **Abdul Rashid V. Kuldeep Singh, [CRM-M-3878-2024] decided on 24.01.2024**. On the basis of said judgments, the learned First Appellate Court has rightly modified first order dated 16.12.2023 by directing to deposit 5% of compensation amount instead of 20% of compensation amount as ordered earlier. Learned First Appellate Court declined the application for release of amount in favour of petitioner/complainant during the pendency of appeal by relying upon the authority of **Amit Kumar deceased through his LR Smt. Sushila Devi (supra)**. Thus it was rightly directed that DD/Cheque will be disbursed and regulated on the outcome of the decision of the appeal pending before First Appellate Court. Learned counsel for respondents/convicts further raised plea that by passing impugned order dated 21.03.2024 only one of the condition of bail was modified which was well within the purview of First Appellate Court and it did not amount reviewing its own order. Therefore, petitions filed by petitioner deserve dismissal.

5. I have considered the arguments advanced before me and have gone through the record carefully. It is matter of record that



respondents/accused filed separate appeals against judgment of conviction dated 18.11.2023 and order of sentence dated 30.11.2023 and along with appeal, filed application for suspension of sentence which was disposed of by passing order dated 16.12.2023, which is Annexure P-4. Sentence awarded by the learned Magistrate to appellants/convicts was suspended on furnishing bail bonds to the tune of Rs.1 lakh each with one surety in the like amount subject to condition to deposit 20% of compensation amount within a period of one month. Instead of depositing 20% of compensation amount, respondents/appellants filed application under Section 389 Cr.P.C. for suspension of compensation amount to be deposited on behalf of the appellants/accused. Said application is Annexure P-5. On the basis of this application, learned First Appellate Court passed impugned order dated 21.03.2024 reducing the deposit of compensation amount from 20% to 5%. While passing impugned order, learned First Appellate Court has relied upon the judgments of Coordinate Bench i.e. in **Amit Kumar (Deceased) through his LR's (supra)** and **Abdul Rashid's case (supra)**. While discussing the controversy in para No.5 further referred the judgments cited in **2023 (10) SCC 446 titled Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Limited and others**. Thus by relying upon these judgments First Appellate Court modified its own order dated 16.12.2023 (Annexure P-4) and passed the impugned order dated 21.03.2024 (Annexure P-1).

6. Learned counsel representing the respondents/convicts raised the point that passing of impugned order dated 21.03.2024 did not amount review of its own order, in-fact one of the condition for bail was modified.

So far as aforesaid arguments advanced by learned counsel for



respondents/convicts does not convince mind of this Court. In-fact order dated 16.12.2023 (Annexure P-4) giving directions to deposit 20% of the compensation amount within a period of one month was passed under the provisions of Section 148 of NI Act, 1881 which runs as under:-

“148. Power of Appellate Court to order payment pending appeal against conviction. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:

Provided that the amount payment under the sub-section shall be in addition to any interim compensation paid by the appellant under Section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

Gainful reference can be made to the judgments of Hon'ble Apex Court in case titled as **Surinder Singh Deswal @ Col. S.S. Deswal and others Vs. Virender Gandhi 2020 (3) All. CrI.Rulings 2923 wherein in para No.8.1. held as under:-**

“8.1. 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 N.I.



Act was being frustrated, the Parliament has though it fit to amend section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused-appellant 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 N.I. Act, it cannot be said that any vested right of appeal of the accused – appellant has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. 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 N.I. Act, no substantive right of appeal has been taken away and/or affected.”.

There is another judgment of Hon’ble Apex Court in ***Jamboo Bhandari Vs. Madhya Pradesh State Industrial Development Corporation Limited and others (2023) 10 SCC 446*** which was also relied upon by the learned First Appellate Court while passing the impugned order dated 21.03.2024 (Annexure P-1), to clarify the provision of Section 148 of NI Act, and reference is made to para Nos.6 and 7 of the aforesaid judgment which runs as under:-

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the 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.



7. *Therefore, when the appellate Court considers the prayer under Section 389 Cr.P.C. of an accused who has been convicted for offence under Section 138 NI 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.”*

7. Therefore, in view of Section 148 of NI Act in an appeal by drawer against conviction under Section 138 of NI Act, the appellate Court can order to deposit such amount which shall be minimum of 20% of the fine or compensation awarded by the trial Court. Order dated 16.12.2023 (Annexure P-4) passed by First Appellate Court was in consonance with the provisions of Section 148 of NI Act. In **Jamboo Bhandari's case (supra)** it was held that it was open for the Appellate Court to consider whether there is any exceptional case which warrants to deposit less than 20% fine/compensation. Therefore, onus was on appellants/convicts to establish before the First Appellate Court that there were exceptional circumstances and considering those the Appellate Court may not impose the aforesaid condition or reduce it in suitable case. At the time of passing of order dated 16.12.2023 (Annexure P-4) no such exceptional case was made out by the respondents/appellants and subsequently filed application (Annexure P-5) seeking suspension of aforesaid condition. Learned First Appellate Court without taking into consideration the provisions of Section 148 of NI Act modified its own order by passing impugned order dated 21.03.2024 which amounts to review of its own order. First



Appellate Court could have not reviewed its own order except to correct clerical and arithmetical error. Once order was passed, the Court had no power to review or alter the same. Consequently, in view of aforesaid discussions, I find merits in the petitions filed by the petitioner/complainant and the impugned order dated 21.03.2024 passed by learned Additional Sessions Judge, Faridabad in both the cases is accordingly quashed.

8. Present petitions have also been filed against impugned order dated 06.04.2024 (Annexure P-2) vide which the learned Appellate Court declined the application for the release of amount so deposited subject to the final adjudication of the appeal. Section 148 (3) as referred above gives discretion to the Appellate Court which may direct the release of amount deposited by the appellant during the pendency of the appeal. Therefore, it is not mandatory for the First Appellate Court to release the amount rather it is discretion of the appellate Court to pass appropriate order considering the facts and circumstances of the case. Therefore, no interference is required in the order dated 06.04.2024 (Annexure P-2) passed by the Appellate Court.

9. Both petitions are, accordingly, disposed of.

10. Pending application (s), if any, also stands disposed of.

12.07.2024

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No