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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision:- 09.08.2024

Kamlesh Passi

....Petitioner

Vs.

Mohan Lal Kalsi

...Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Ankit Gupta, Advocate
for the petitioner.

AMARJOT BHATTI, J.

Petitioner Kamlesh Passi has filed petition under Section 482 Cr.P.C. for quashing of order dated 17.05.2024 passed by learned Additional Sessions Judge, Hoshiarpur (Annexure P-4) in Criminal Appeal No. 172/2024 dated 16.05.2024 in which present petitioner was convicted by the Court of Judicial Magistrate First Class, Hoshiarpur vide judgment and order of sentence dated 26.04.2024 for simple imprisonment for a period of six months along with direction to pay compensation amount in sum equivalent of cheque amount to complainant as detailed therein.

2. Learned counsel for petitioner argued that Mohan Lal Kalsi filed complaint under Section 138 of Negotiable Instruments Act, 1881 regarding cheque No. 481131 dated 31.10.2017 for a sum of ₹3,50,000/- drawn at Dena Bank, Branch Hoshiarpur in which she was convicted

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and sentenced as referred above. Copy of judgment and order of sentence are Annexure P-2. She (present petitioner) preferred appeal against impugned judgment and order of sentence. Copy of grounds of appeal is Annexure P-3. In said appeal, learned Appellate Court passed impugned order dated 17.05.2024, where she was directed to deposit 20% of amount of fine/compensation within a period of 60 days from the date of passing order. Feeling aggrieved of this order, present petition is filed. It is argued that learned Appellate Court failed to consider that petitioner is a poor lady, having no source of income. She is having a good case on merits. Her application seeking exemption from depositing 20% of compensation amount was wrongly declined. Said condition to deposit 20% of fine/compensation amount is contrary to the provisions of Section 357 of Cr.P.C. Appeal is yet to be decided on merits. Learned Appellate Court was not justified by imposing aforesaid condition while granting bail. Therefore, impugned order dated 17.05.2024 (Annexure P-4) may kindly be quashed by accepting present petition.

3. Considering the fact that entire case is based on documents which are placed on record by learned counsel for petitioner, no purpose would be served by serving notice to respondent.

4. I have considered the arguments advanced by learned counsel for petitioner. Facts of the case are not much disputed. Admittedly, Mohan Lal Kalsi filed complaint under Section 138 of Negotiable Instruments Act on the basis of dishonour of cheque No. 481131 dated 31.10.2017 for a sum of ₹3,50,000/-. In the said complaint case, present petitioner was convicted and sentenced for simple imprisonment for a period of six



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months with direction to pay compensation amount in sum equivalent to cheque amount as detailed in copy of judgment and order of sentence dated 26.04.2024, Annexure P-2. Present petitioner filed appeal against the aforesaid judgment in which learned Additional Sessions Judge, Hoshiarpur passed impugned order dated 17.05.2024 vide which she has been directed to deposit 20% of compensation amount awarded by learned trial Court for payment to respondent No. 1/complainant within 60 days from the date of order, failing which her suspension of sentence shall be vacated.

5. Learned Additional Sessions Judge has passed aforesaid order 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 payable under this 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:



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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.”

Learned Additional Sessions Judge, Hoshiarpur while disposing the matter in controversy has relied upon the judgment of Apex Court in case titled “**Surinder Singh Deswal @ Col. S.S. Deswal & Ors. Vs. Virender Gandhi & Anr.**” 2020(3) All. CrL. Rulings 2923 as well as another judgment of Apex Court in “**Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Ltd. & Ors.**” (2023) 10 SCC 446. It is rightly concluded by Appellate Court that as per the provisions of Section 148 of NI Act, 1881, Appellate Court may order appellant to deposit such amount which shall be a minimum of 20% of fine or compensation and it is only under exceptional circumstances the Appellate Court may direct to deposit lesser amount. Therefore, onus was on petitioner to bring forward said exceptional circumstances before the Appellate Court to justify her stand. While filing the present petition, it is merely alleged that petitioner is a poor lady having no source of income, therefore, impugned order passed by learned Additional Sessions Judge, Hoshiarpur is not justified. However, petitioner has failed to refer any illegality or irregularity committed by learned Additional Sessions Judge, Hoshiarpur while passing impugned order dated 17.05.2024 (Annexure P-



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4), therefore, it does not require any interference. Petition filed by petitioner is accordingly dismissed.

6. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

09.08.2024
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(AMARJOT BHATTI)
JUDGE

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