



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

290

CRM-M-47637-2021 (O&M)
Date of decision : 23.05.2024

Vishal Nayyer

..... Petitioner

Versus

Cholamandlam Investment & Finance Company Ltd.

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rishu Mahajan, Advocate
for the petitioner.

Ms. Puja Chopra, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Present petition is directed against order dated 21.10.2021 (Annexure P-2) passed by the Appellate Court in CRA No.60/2021 dated 19.10.2021 whereby the petitioner was directed to deposit 20% of the cheque amount in dispute in Complaint No.24729/2013 dated 04.09.2013 under Section 138 of Negotiable Instruments Act.
2. Alleged allegations in the complaint against petitioner was that he obtained the Home Loan facility of Rs.61,80,000/- which was repayable with equal monthly installments. In order to discharge his legal



debt/liability the petitioner issued a cheque for a sum of Rs.7 lakh. Cheque was not honoured. Trial Court convicted the petitioner under Section 138 of Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of two years with further direction to pay compensation of Rs.7 lakh and in failure of payment of compensation to complainant, he further has to undergo an additional imprisonment of one month. Petitioner preferred an appeal before Sessions Court, Amritsar. Appellate Court vide impugned order suspended the sentence of the petitioner subject to the condition that he will deposit 20% of the compensation amount as awarded by the Trial Court under Section 357 Cr.P.C.

3. Counsel for the petitioner submits that in view of law laid down by Supreme Court in the case of ***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and Ors.*** reported as **(2023) 10 SCC 446**, the Court is required to interpret the provision of Section 148 of the N.I. Act pragmatically. Reliance is being placed upon para 6 to 10 which read 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.

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.

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.

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.

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.”

4. In the considered opinion of this Court, counsel for the petitioner is right in contending that the Court is required to apply mind while deciding application filed under Section 389 seeking suspension of sentence as to whether the case pleaded by applicant calls for to impose or to dispense with condition of granting interim compensation against the accused. The impugned order does not show any such application of mind in the present case.

5. Keeping in view the very objective of enactment of Section 148 of the N.I. Act i.e. the speedy disposal of appeal, this Court finds that there is no reason to keep this petition pending before this Court or to set aside the order and direct the trial Court to pass afresh. The equities can be balanced by modifying the impugned order. Petitioner is ready to pay 10% of the cheque amount and the interest of the respondent can be safeguarded as well. Appellate Court can be directed to decide the appeal expeditiously.

6. In view of above, impugned order is modified to the extent that the petitioner shall deposit 10% amount of the compensation awarded by the trial Court and Appellate Court is further directed to decide the appeal expeditiously preferably within 03 months from the date of receipt of certified copy of this order.

7. With the aforesaid modification in the impugned order dated 21.10.2021, the present petition is disposed off.



- 8. Ordered accordingly.
- 9. Pending miscellaneous application, if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

May 23, 2024
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Whether speaking/reasoned :	Yes
Whether Reportable :	No