

IN THE PUNJAB AND HARYANA HIGH COURT AT  
CHANDIGARH

203 CRM-M-42928-2019,  
CRM-M-45635-2019,  
CRM-M-45716-2019,  
CRM-M-46197-2019 &  
CRM-M-46213-2019  
Date of Decision: 23.09.2024

M/S SHYAM LAL CONTRACTORS AND ANOTHER  
.....PETITIONERS  
VERSUS

STATE OF HARYANA AND ANOTHER  
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ajay Chauhan, Advocate for  
Mr. Diwan S. Adlakha, Advocate for the petitioners.  
Mr. B.S. Virk, Sr. DAG, Haryana.

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SANDEEP MOUDGIL, J

1. This order shall dispose off all the five above mentioned petitions as common question of law is involved therein and this order is being passed in CRM-M-42928-2019, which is being treated as lead case, and facts are also being taken from this petition for passing this order.
2. This petition being filed under Section 482 Cr.P.C. seeks quashing of impugned order dated 06.08.2019, Annexure P-6, passed by the learned Additional Sessions Judge, Panchkula, whereby the petitioners have been directed to deposit 20% amount of the total compensation awarded by the learned trial Court, by holding the same to be wrong and contrary to the facts and settled principles of law.

3. Brief facts of the case are that petitioner No.1 – M/s Shyam Lal Contractors is a proprietor firm and petitioner No.2 is its proprietor. Respondent No.2 – Rakesh Ghai, Proprietor of M/s Rakesh Ghai Shuttering Suppliers, filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, alleging that the petitioners had taken shuttering material on rent from him vide various bills in the year 2012-13 and in order to discharge the liability, petitioners issued 11 post dated cheques, including cheque bearing no.132048 dated 10.03.2015 amounting to Rs.2,00,000/-, however, the same, upon presentation, returned unpaid with the remarks “insufficient funds”. The learned Judicial Magistrate Ist Class, Panchkula, convicted and sentenced the petitioners for a period of one year for the commission of offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act' in short) vide judgment and order dated 11.12.2018 & 14.12.2018, Annexures P-2 & P-3, respectively.

4. The appeal preferred by the petitioner against the above referred judgment and order came up for hearing before the learned Additional Sessions Judge, Panchkula, and the sentence of the petitioner was suspended vide order dated 10.01.2019, Annexure P-4. However, subsequently, vide order dated 06.09.2019, petitioner was directed by the learned Appellate Court to deposit 20% amount of the total compensation awarded by the learned Judicial Magistrate Ist Class, Panchkula (for short – ‘trial Court’), which is under challenge in this petition by the petitioners.

5. It is contended by the learned counsel for the petitioners that the order passed by the learned Appellate Court directing the petitioners to deposit 20% amount of the total compensation amount is absolutely illegal

and erroneous because the bare perusal of Section 148 of the Amended NI Act itself, would show that the word used is 'may' as such it is not mandatory to deposit the amount as such the direction issued is in contravention to the provisions of N.I.Act. The learned counsel has relied upon a judgment of the Hon'ble Supreme Court passed in the case titled as "Surinder Singh Deswal @ Col. S.S.Deswal and others Versus Virender Gandhi", reported as 2019 (3) RCR Criminal 186, in support of his contention about usage of word 'may'. He has further contended that the learned Appellate Court has not applied its judicious mind before issuance of such direction to the petitioners. He has, therefore, prayed for setting aside the order, Annexure P-6, being illegal, unjust and erroneous.

6. On the other hand, learned counsel for the State has submitted that the order passed by the learned Appellate Court is a just and proper order because it is mandatory on the part of the accused to deposit 20% amount, being minimum, of the total compensation/fine amount before the Appellate Court, as required under the provisions of N.I.Act. As such, the present petition as well as other connected petitions are liable to be dismissed.

7. Heard and case file also perused with the able assistance of the learned counsel for both the sides.

8. Before proceeding with the order, this Court feels it necessary to note down here that the facts and circumstances of all the four other connected petitions are similar to the one in hand, however, there is difference in the cheque numbers and cheque amount and dates of judgment of conviction and orders of sentence, to the following effect:-

**i) CRM-M-45635-2019**

Cheque Nos are 132045 dated 10.12.2014; 132046 dated 10.01.2015; 132047 dated 10.02.2015, amounting to Rs.2.00 lacs; Rs.1.00 lakh and Rs.2.00 lacs, respectively.

Date of judgment of conviction and order of sentence is 11.12.2018 & 13.12.2018, respectively.

**ii) CRM-M-45716-2019**

Cheque Nos are 132039 dated 10.06.2014; 132040 dated 10.07.2014; 132041 dated 10.08.2014, amounting to Rs.2.00 lacs; Rs.1.00 lakh and Rs.2.00 lacs, respectively.

Date of judgment of conviction and order of sentence is 11.12.2018 & 13.12.2018, respectively.

**iii) CRM-M-46197-2019**

Cheque Nos are 132036 dated 10.03.2014; 132037 dated 10.04.2014, amounting to Rs.1.00 lakh and Rs.2.00 lacs, respectively.

Date of judgment of conviction and order of sentence is 18.12.2018.

**iv) CRM-M-46213-2019**

Cheque Nos are 132042 dated 10.09.2014; 132043 dated 10.10.2014; 132044 dated 10.11.2014, amounting to Rs.1.00 lakh; Rs.2.00 lacs and Rs.1.00 lakh, respectively.

Date of judgment of conviction and order of sentence is similar to that in the main case.

9. After going through the petition, it is revealed that the petitioner has been directed by the learned Appellate Court, vide Annexure P-6, to deposit 20% of the total compensation amount as awarded by the learned JMIC, Panchkula, however, the petitioner is aggrieved of the said order.

10. Section 148 of the NI Act gives the appellate court the power to order an appellant to deposit a minimum of 20% of the compensation or fine awarded by the trial court in an appeal against a conviction for dishonouring a cheque. Therefore, the appellant has argued against the provisions of the statute.

11. It will be necessary to point out by the Court that the judgment referred Surinder's case (supra) above and relied upon by the petitioners does not serve their purpose wherein it provides that “special reasons are to be assigned for not directing to deposit the interim amount of compensation by the appellate court”. Meaning thereby, the appellate court will have to give special reasons if the appellant is not directed by it to deposit the interim amount of compensation. As such, the petitioner has misread the judgment which is otherwise of no help to the petitioners and their case(s).

12. ***"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.

13. 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 sentenced 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.*

*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.*

*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.*

*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."*

14. Resultantly, the present petition and other connected petitions fail and are hereby ordered to be dismissed for lacking substance and merit.
15. Ordered accordingly.

23.09.2024  
Poonam Negi

(SANDEEP MOUDGIL)  
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable :Yes/No