



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision:30.01.2024

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CRL.REV.P. 140/2024 & CRL.M.As. 2857-2858/2024

RAJESH JAIN

..... Petitioner

Through: Mr. Sarvesh Singh and Mr. Pradeep
Kumar Sharma, Advocates.

Versus

THE STATE OF NCT OF DELHI AND ANR

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for
State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present revision petition has been filed by the petitioner under Section 397 and 401 read with Section 482 Cr.PC against the impugned order dated 20.12.2023 passed by the learned ASJ (FCT)-01, South District, Saket, New Delhi in Criminal Appeal No.303/2023, whereby the application filed by the respondent No.2/complainant under Section 148 Negotiable Instruments Act (hereinafter referred to as 'NI Act') came to be allowed and the petitioner was directed to pay 20% of the fine/compensation amount, as determined by the Trial Court.

2. From the material placed on record, it is discerned that the complainant had preferred a complaint under Section 138 NI Act against the petitioner being Complaint Case No.5338/2017, wherein during the



pendency of proceedings, the parties arrived at a settlement. A statement to the aforesaid effect was recorded on 07.03.2019. The petitioner had also furnished an undertaking on 09.03.2019 and had agreed to pay Rs.15 lacs to the complainant within one year after withdrawal of the complaint case in full and final discharge of the liability. The cheque in question came to issued in pursuance of the aforesaid settlement. However, when the same was presented, it was returned with remarks '*bank or branch blocked*'. After trial, the petitioner was found guilty and convicted. Vide order on sentence dated 25.09.2023, the petitioner was sentenced to undergo simple imprisonment for a period of two years and was also directed to pay a fine of Rs.30 lacs, in default of which he was directed to undergo further simple imprisonment for a period of six months. The petitioner preferred an appeal against the same, wherein the impugned order came to be passed.

3. In support of his submissions that the Appellate Court erred in allowing the application under Section 148 NI Act thereby directing him to pay 20% of the compensation amount, the petitioner has placed reliance on the decision of the Supreme Court in Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. & Ors.¹

4. A perusal of the aforesaid judgment would show that while referring to its earlier decision in Surinder Singh Deswal @ Colonel S.S. Deswal and Ors. v. Virender Gandhi², paragraph 8 of the said decision came to discussed which reads as under:-

“xxx

¹ (2023) 10 SCC 446

² (2019) 11 SCC 341



8. Now so far as the submission on behalf of the Appellants that even considering the language used in Section 148 of the N.I. Act as amended, the appellate Court "may" order the Appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court and the word used is not "shall" and therefore the discretion is vested with the first appellate court to direct the Appellant - Accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the Appellants would be contrary to the provisions of Section 148 of the N.I. Act as amended is concerned, considering the amended Section 148 of the N.I. Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the N.I. Act, though it is true that in amended Section 148 of the N.I. Act, the word used is "may", it is generally to be construed as a "rule" or "shall" and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended Section 148 of the N.I. Act confers power upon the Appellate Court to pass an order pending appeal to direct the Appellant-Accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the Appellant-Accused Under Section 389 of the Code of Criminal Procedure to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the N.I. Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the Appellant. Therefore, if amended Section 148 of the N.I. Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148



of the N.I. Act, but also Section 138 of the N.I. Act. Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonoured of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, the Parliament has thought it fit to amend Section 148 of the N.I. Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the N.I. Act and also Section 138 of the N.I. Act.

xxx”

5. After noting the aforesaid, the Court observed:-

“xxx

6. What is held by this Court is that a purposive interpretation should be made of Section 148 N.I. 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.

xxx”

6. The only ground urged by the petitioner before the Court is that



during the trial, the petitioner had denied receipt of the legal notice. The findings recorded by the Trial Court on this aspect is to the effect that demand notice was duly served by speed post as well as by WhatsApp. The proof of delivery by the two modes was also exhibited as Ex.CW1/7 and CW1/8. Further, in his statement under Section 294 Cr.P.C., the petitioner had admitted receipt of the demand notice.

7. Considering the aforesaid, this Court is of the considered opinion that the Appellate Court had rightly observed in the impugned order that the petitioner has failed to make out an exceptional case for waiver of condition of deposit of 20% of the amount.

8. In view of the aforesaid, I find no ground to interfere with the impugned order. The revision petition is accordingly dismissed with a cost of Rs.5,000/- to be deposited with Delhi State Legal Services Authority within a period of the two weeks. The proof of cost be deposited with the Registry.

9. The petition alongwith pending applications is accordingly disposed of.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 30, 2024/rd