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

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Reserved on: 12.12.2023
Pronounced on: 03.01.2024

+ **CRL.M.C. 766/2020 & CRL.M.A. 3156/2020 (Stay)**

PUNEET SALUJA

.... Petitioner

Through: Mr. Ajit Kumar Sinha, Senior
 Advocate, Mr. Pushkar Sood
 and Mr. Satya Prakash Singh,
 Advocates.

versus

STATE & ANR.

..... Respondents

Through: Mr. Satish Kumar, APP for the
 State.
 Mr. Saurav Sandihya and Mr.
 Hem Kumar, Advocate for R-
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CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been preferred by the petitioner, seeking quashing of order dated 20.01.2020, passed in C.A. No. 174/2019, titled as 'Puneet Saluja vs. SBI Global Factors Limited', pending before learned Special Judge, NDPS/ New Delhi, whereby an application under Section 148 of the Negotiable Instruments Act,



1881 ('NI Act') filed by the petitioner was disposed of, directing the petitioner to deposit Rs.1,20,00,000/- within a period of 30 days.

2. Brief facts of the case, as per complaint filed under Section 138 NI Act, are that the petitioner/accused, who was the proprietor of M/s. Ena International, had approached the complainant i.e., M/s. SBI Global Factors Limited for Export Factoring Facilities and the complainant had granted the same to the accused *vide* Export Factoring Agreement dated 19.04.2008. Against the total outstanding amount of Rs. 4.99 crores (approximately) as on 13.03.2009, the accused had issued four cheques in favour of the complainant company, amounting to a total of Rs. 4.4 crores. The accused had assured the complainant that these cheques would be honoured upon presentation and on such assurance, the complainant had presented these cheques with its banker on 13.03.2009. However, these cheques had returned dishonoured *vide* cheque return memo dated 13.03.2009 with the remarks '*Funds Insufficient*'. Thereafter, the complainant had issued a legal notice dated 25.03.2009 to the accused seeking payment of the amount in question. However, since the accused had failed to either reply to the legal notice or make any payment, the complainant had filed the present complaint under Section 138 of the NI Act.

3. Learned Metropolitan Magistrate-04 (NI Act), New Delhi District, Patiala House Courts, Delhi, *vide* judgment dated 17.07.2019 had convicted the petitioner herein for offence under Section 138 of NI Act. *Vide* order on sentence dated 27.07.2019, the learned Magistrate had sentenced the petitioner to six months of



simple imprisonment, along with payment of compensation of Rs. 6 crores within one month. Further, in default of payment of compensation, the petitioner was further sentenced to undergo six months of simple imprisonment.

4. The petitioner herein had then filed an appeal i.e. Criminal Appeal No. 174/2019, against her conviction under Section 138 of NI Act, and the sentence of the petitioner was suspended by the learned Sessions Court *vide* order dated 22.08.2019.

5. Thereafter, *vide* order dated 20.01.2020, the learned Sessions Court had dismissed the application filed under Section 148 of NI Act, read with Section 29 of the Provincial Insolvency Act seeking waiver of deposit of 20% amount of compensation. The relevant portion of the impugned order reads as under:

“Heard. In terms of the judgment of Surender Singh as relied by the Ld. Counsel for complainant, the accused is liable to deposit minimum of 20% of fine or compensation awarded by the trial court. The insolvency proceedings which were initiated belatedly is not an exceptional reason to waive the condition for deposit of the said amount. Even otherwise, in case titled as *MBL infrastructure Vs Sri Manik Chand Somani in CRR no. 3455/2018 dated 16.04.2019* held that the provisions of the company act similar to one insolvency act is not applicable to the proceedings u/s 138 NI Act. Accordingly, the present application is dismissed and the appellant/accused Puneet Saluja is directed to deposit the 20% of the compensation amount of Rs. 6 crores i.e., Rs. 1,20,00,000/- within one month from today before the trial court by way of FDR in the name of District & Sessions Judge, New Delhi.”

6. Learned Senior Counsel for the petitioner, while impugning the order dated 20.01.2020, argues that the learned Sessions Court



has failed to apply its mind to determine whether the petitioner herein was entitled to waiver of deposit of 20% amount of compensation, considering her financial condition, health condition, the fact of pendency of insolvency proceeding against the petitioner, and the claim lodged by the respondent against the insurance company namely New India Insurance Company Limited, which is pending before National Consumer Dispute Resolution Commission (NCDRC). Learned Senior Counsel relies upon the decision of Hon'ble Apex Court in case of ***Jamboo Bhandari v. M.P. State Industrial Development Corporation*** 2023 SCC OnLine SC 1144, to contend that imposition of 20% amount of compensation/fine, as a pre-condition for filing appeal against conviction, is not an absolute rule and the Appellate Courts can consider the exceptional circumstances which warrant grant of suspension of sentence without imposing such a condition. It is stated that *firstly*, the petitioner is a senior citizen, aged about 57 years, and has been suffering from Multiple Sclerosis since 1998, which has affected her brain. *Secondly*, it is submitted that the complainant had already filed two consumer complaints before NCDRC against New India Insurance Company Limited seeking the same amount. *Thirdly*, it is stated that the petitioner had filed an insolvency petition before Saket Courts, New Delhi seeking a direction to declare the petitioner as undischarged insolvent, and that the petitioner has not been earning any income which is assessable as income tax after assessment year 2010-11; further, the petitioner had also suffered a loss of Rs. 10.6 crores, which is reflected in her ITR filed in the year 2010-11.



Therefore, learned Senior Counsel for the petitioner prays that the impugned order be set aside and the petitioner be exempted from depositing the 20% amount of compensation in view of these exceptional circumstances, or the matter may be remanded back to the learned Sessions Court for deciding afresh the issue in question, after considering all the exceptional circumstances raised by the petitioner.

7. Learned counsel for the respondent, on the other hand, vehemently opposes the present petition and argues that there is no infirmity with the order passed the learned Sessions Court. It is stated that the learned Sessions Court has already considered the argument of pendency of insolvency proceedings and has rightly held that these proceedings were initiated belatedly and initiation of such proceedings have no bearing on the proceedings under Section 138 of NI Act. It is further argued that as held by Hon'ble Apex Court in the case of *Surinder Singh Deswal @ Col. S.S. Deswal v. Virender Gandhi* (2019) 11 SCC 34, Section 148 of NI Act has to be given purposive interpretation to ensure that unscrupulous drawers of dishonoured cheques do not delay the proceedings by easily filing appeals and obtaining stay in the proceedings. It is submitted that since none of the circumstances shown by the learned Senior Counsel for the petitioner are exceptional in nature, the present petition should be dismissed since it is devoid of any merits.

8. This Court has heard arguments addressed by learned Senior Counsel for the petitioner, and learned counsel for the respondent.



The material placed on record, as well as the case laws relied upon by both the parties, has been perused.

9. The issue in question, raised by way of present petition, is that whether there exist exceptional circumstances to exempt the petitioner from depositing the 20% of the fine, as directed by the learned Trial Court by way of order on sentence, during the pendency of Criminal Appeal filed by the petitioner against his conviction under Section 138 of NI Act.

10. Before considering the case on merits, it will be relevant to first take note of Section 148 of N.I. Act, which provides as under:

“148. Power of Appellate Court to order payment pending appeal against conviction -

(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973, 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:

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.”

11. Moreover, this Bench in case of ***Gulshan Arora v. State (NCT of Delhi)*** 2023 SCC OnLine Del 2616 had examined the scope of Section 148 as well as the decision of Hon’ble Apex Court in case of ***Surinder Singh Deswal*** (*supra*). The relevant portion of the judgment in case of ***Gulshan Arora*** (*supra*), which is also relevant for the purpose of adjudication of present case, is reproduced hereunder for reference:

“...15. The aim, object and purport of Section 148 was explained by the Hon'ble Apex Court in *Surinder Singh Deswal @ Col. S.S. Deswal v. Virender Gandhi*, (2019) 11 SCC 341, (hereinafter ‘*Surinder Singh Deswal-I*’) wherein it was categorically held that the use of words “may” in Section 148 must be construed as “shall” in order to give force to the actual intent behind insertion of such provision under the NI Act, 1881. The relevant observations of the Apex Court are extracted herein-below:

“7.1. 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 NI Act was being frustrated, Parliament has thought it fit to amend Section 148 of the NI Act, by which the first appellate court, in an appeal challenging the order of conviction under Section 138 of the NI Act, is conferred with the power to direct the convicted appellant-accused to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court.....

8. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the NI 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 NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, though it is true that in the amended Section 148 of the NI 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 NI 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 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the NI 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 NI Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the NI Act, but also Section 138 of the NI Act. The 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 dishonour 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, Parliament has thought it fit to amend Section 148 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the NI Act and also Section 138 of the NI Act.”

16. A perusal of the aforesaid decision of Hon'ble Apex Court also reveals that though the Appellate Court is required to ordinarily direct an accused/appellant to deposit a minimum of 20% of fine/compensation imposed upon him, either on its own while ordering suspension of sentence under Section 389 Cr. P.C. or upon an application moved by the complainant under Section 148 NI Act, the Appellate Court, however, may choose to not impose such a condition upon an accused/appellant for “special reasons” to be assigned or recorded.”

(Emphasis supplied)

12. The proposition that an appellant can be exempted from depositing the fine as per Section 148 of NI Act, by recording ‘special reasons’ or under exceptional circumstances, was further clarified by the Hon’ble Apex Court in recent decision of ***Jamboo Bhandari*** (*supra*). The relevant portion of the said decision reads 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.”

13. Having taken note of the settled position of law, the three exceptional circumstances, as narrated by the learned Senior Counsel for the petitioner, which makes the petitioner entitled to seek waiver from depositing the 20% amount of fine, are summarized as under:

- i. The petitioner had filed an insolvency petition, under the Provincial Insolvency Act, 1920, seeking a direction to declare the petitioner as “undischarged insolvent”, since the petitioner has not been earning any income which is assessable as income tax after the assessment year 2010-11, and she had suffered a loss of Rs. 10,66,82,746/-, due to economic depression in the year 2009.
- ii. The respondent had already filed two consumer complaints before NCDRC, New Delhi, against New India Assurance Co. Limited, seeking the same amount, which it was claiming from the present petitioner
- iii. The petitioner is aged about 57 years and is suffering from several ailments including Multiple Sclerosis since the year 1998.

14. However, this Court notes that in the application filed before the learned Sessions Court by the petitioner under Section 148 of NI Act seeking waiver of deposit of 20% of fine amount, only two circumstances were raised before the learned Sessions Court, which



were claimed as exceptional in nature. The *first* exceptional circumstance was the pendency of petition filed by the petitioner under the Provincial Insolvency Act, and the *second* exceptional circumstance was the medical condition of the petitioner. Before this Court, one additional circumstance has been claimed as exceptional i.e. the pendency of consumer complaints filed by the complainant before the NCDRC against the insurance company, allegedly seeking the same amount as the amount in question in the present case.

15. This Court also notes that in the impugned order dated 20.01.2020, though the learned Sessions Court has dealt with the argument regarding pendency of insolvency petition, it has not given any finding on the second exceptional circumstance i.e. the medical condition of the petitioner. However, it also appears from the perusal of impugned order that the arguments in this regard were not addressed before the learned Sessions Court by the counsel for petitioner, though this ground was mentioned in the application filed under Section 148 of NI Act.

16. The learned Senior Counsel for the petitioner, during the course of arguments, had also submitted that the matter may be remanded back to the learned Sessions Court for deciding the issue afresh since the petitioner has raised three exception circumstances, in view of the decision of Hon'ble Apex Court in case of ***Jamboo Bhandari (supra)***, in which it was held that the Appellate Court can consider the existence of any 'exceptional circumstances' to waive off the condition to deposit 20% of fine amount during the pendency of appeal against conviction under Section 138 of NI Act.



17. Having considered the overall facts and circumstances of the cases, the contents of the impugned order and the judicial precedents, this Court is of the opinion that the present case be remanded back to the learned Sessions Court/Appellate Court for deciding afresh, as to whether the three exceptional circumstances being raised by the petitioner herein fall within the category of exceptional circumstances so as to warrant waiver of condition to deposit 20% of fine amount during the pendency of appeal against conviction under Section 138 of NI Act. The petitioner shall also be at liberty to bring any other exceptional circumstance to the notice of the learned Sessions Court.

18. It is directed that the learned Sessions Court/Appellate Court shall decide the issue in question within a period of two months from date of receipt of this order, after hearing arguments from both the parties. It is also clarified that the issue shall be decided on its merits as per law, and without being influenced by any of the observations made in this judgment.

19. Accordingly, the present petition alongwith pending application is disposed of in above terms.

20. A copy of this judgment be forwarded to the learned Sessions Court concerned where the C.A. No. 174/2019, titled as 'Puneet Saluja vs. SBI Global Factors Limited', is pending adjudication.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 3, 2024

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