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

\+ CRL.M.C. 3587/2023, CRL.M.A. 13612/2023

RAJESH KUMAR .....Petitioner

Through: Mr. Praveen Suri, Advocate.

versus

CHAJJAN SINGH .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **11.09.2024**

1. The present petition has been filed to assail the order dated 08.05.2023 passed in Crl. A. No.100/2023 by ASJ-05, North West District, Rohini Courts, Delhi. The present petition arises out of proceedings under Section 138 of N.I. Act filed on behalf of the respondent in which the petitioner was convicted vide judgement dated 31.03.2023 and vide order on sentence dated 28.04.2024 sentenced to one month of simple imprisonment and fine of Rs. 13,90,000/-. The Appellate Court vide the impugned order suspended the sentence subject to the petitioner depositing 25% of the fine amount.

2. In the present proceedings, notice came to be issued on 19.05.2023 and the respondent was directed to be served. An affidavit of service has been placed on record stating that the respondent through his legal heir was duly served by way of speed post and the tracking report is also found to be a part of the affidavit of service. Even otherwise, the proceedings would

show that the respondent was last represented on 29.08.2023, whereafter there is no appearance. Even today, the respondent remains unrepresented. In this background, the Court has proceeded to hear submissions.

3. Mr. Suri, learned counsel for the petitioner contends that vide the impugned order, the Appellate Court has suspended the appellant's sentence. However, the Apellate Court has directed the petitioner to deposit 25% of the fine/compensation amount awarded by the Ld. Trial Court. The petitioner is aggrieved by the later part of the aforesaid order contending that the same is cryptic and unreasoned and failed to consider the grounds of petitioner for reduction in the percentage of fine to be deposited. In support of his submissions the petitioner has placed reliance on Jamboo Bhandari v. M.P. State Industrial Development Corporation ltd., reported as **2023 SCC OnLine SC 1144**.

4. In Jamboo Bhandari v. M.P. State Industrial Development Corporation ltd., reported as **2023 SCC OnLine SC 1144** held as under: -

> 5. Para 8 of the decision of this Court in *Surinder Singh Deswal* [*Surinder Singh Deswal* v. *Virender Gandhi*, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019) 3 SCC (Civ) 765] reads thus : (SCC p. 350)
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> "*8.* Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 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 NI Act as amended is concerned, considering the amended Section 148 NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 NI Act, though it is true that in the amended Section 148 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 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 389CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 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 NI Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 NI Act, but also Section 138 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 NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 NI Act and also Section 138 NI Act."

(emphasis supplied)

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

7. Therefore, when the appellate court considers the prayer under Section 389CrPC of an accused who has been convicted for offence under Section 138 NI 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.

5. The aforesaid decision came to be rendered by the Supreme Court, thereby outlining the parameters for awarding fine/compensation during the pendency of the trial and appeal under Section 148 N.I. Act. While laying down the parameters, the Supreme Court has also stated that the fine/compensation amount to be awarded by way of a reasoned order.

6. Considering the facts of the case, the impugned order**,** does not show any application of judicial mind, having been passed in a mechanical manner and the same directs suspension of sentence subject to deposit of 25% of the fine / compensation amount without assigning any reason for either awarding compensation or with respect to the percentage so awarded.

7. At this stage, Mr. Suri submits that complying with the directions of this Court dated 19.05.2023, the petitioner has already deposited 20% of the compensation amount with the Appellate Court.

8. Considering that the amount already stands deposited, the impugned order suspending the sentence stands modified to the aforesaid extent.

MANOJ KUMAR OHRI, J

SEPTEMBER 11, 2024

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