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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 8483/2024, CRL.M.A. 32356/2024, CRL.M.A.
32357/2024

AMANDEEP SINGH

.....Petitioner

Through: Mr. Kanhaiya Singhal and Mr. Ujwal
Ghai, Advocates.

versus

RAJEEV MAKHIJANI & ANR.

.....Respondents

Through: None for respondent No.1.
Mr. Nawal Kishore Jha, APP for State
with SI Mamta, P.S. Dwarka, Sector
23.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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25.10.2024

1. By way of present petition, the petitioner seeks to assail the order dated 19.10.2024 passed by the Appellate Court in CA No. 2081/2024 whereby his application seeking modification of the order dated 17.08.2024 has been dismissed. Vide order dated 17.08.2024, the petitioner, who has been convicted by the Trial Court in proceedings initiated under Section 138 of the NI Act, has been directed to pay 20% of the total compensation amount as awarded by the Trial Court within 60 days.

2. The only ground taken before the Appellate Court was that the petitioner belonged to the poor strata of society. The Trial Court was constrained to note that the petitioner had rather misguided the Court that he belonged to the poor strata, however, he was working as Sr. Research Analyst.



3. Learned counsel for the petitioner submits that the petitioner was not working as a Sr. Research Analyst, however, he is employed in a MNC and earning Rs. 48,000/- per month. A reading of the impugned order would show that the Appellate Court passed the same order after applying its mind in Jamboo Bhandari vs Madhya Pradesh State Industrial Development Corporation Limited and Ors, reported as **(2023) 10 SCC 446**. The Supreme Court while discussing the import of Section 148 in Jamboo Bhandari (Supra) held as follows:-

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)

“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.

4. Thus, it is seen that keeping in mind the purpose of the statute, normally the Appellate Court would be justified in directing the depositing of a minimum 20% of the compensation awarded by the Trial Court. The Appellate Court could relax this stipulation only in exceptional circumstances. Considering that the judgment of conviction was passed wherein the petitioner did not even cross-examine the complainant nor led any defence evidence. The only ground taken before the Appellate Court



was that the petitioner belonged to a poor strata. However, that ground is also not justified in the facts noted above.

5. In view of the above, I do not find any ground to interfere with the impugned orders which are upheld.

6. Petition is dismissed alongwith pending applications.

MANOJ KUMAR OHRI, J

OCTOBER 25, 2024

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