(2022) 04 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 8518 Of 2022 (O&M)

Davinder Sharma	APPELLANT
Vs	
Raajz Enterprises Through Its Proprietor Rajwinder Kaur And Anr	RESPONDENT

Date of Decision : 26-04-2022

Acts Referred:
Code Of Criminal Procedure, 1973 — Section 357, 374, 389, 421, 424, 482
Negotiable Instruments Act, 1881 — Section 138, 143A, 148

Citation : (2022) 04 P&H CK 0091

Hon'ble Judges : Jasjit Singh Bedi, J

Bench : Single Bench

Advocate : Vaibhav Narang, Sandeep Singh Deol

Final Decision : Dismissed

Judgement

Jasjit Singh Bedi, J

The prayer in the present petition under Section 482 Cr.P.C. is for the quashing/ setting aside the order dated 03.02.2022 passed by the Court of Additional Sessions Judge, Amritsar (Annexure P-1) in a case bearing No.CRA 6/2022 arising out of the judgment dated 06.01.2022 passed by the Judicial Magistrate Ist Class, Amritsar in complaint No.7779 of 2017 (annexure P-2) to the extent whereby the petitioner was directed to deposit 20% of the compensation amount as a pre-condition for suspension of his sentence during the pendency of the appeal.

The brief facts of the case are that the petitioner came to be convicted by the Court of Judicial Magistrate Ist Class, Amritsar in a case titled as 'Raajz Enterprises Versus Babita Sharma and another' on 06.01.2022. He was convicted and sentenced as under:-

Offence under Sections

Sentence RI

Compensation amount to be paid to the complainant under Section 357(3) Cr.P.C.

RI in default of payment of compensation

138 N.I. Act

One Year

Rs.7,00,000/- alongwith interest @ 9% per annum

Two Months

The appellant (petitioner herein) filed an appeal under Section 374 Cr.P.C. against the said judgment dated 01.01.2022. Alongwith the appeal, the petitioner (appellant therein) moved an application seeking suspension of sentence. The Lower Appellate Court vide the impugned order dated 03.02.2022 ordered that the operation of the substantive sentence of imprisonment awarded to the appellant would remain suspended subject to the appellant's furnishing bail bonds and surety bonds to the satisfaction of the Trial Court/Duty Magistrate within 15 days from that date and subject to the further condition that in terms of Section 148 of the Negotiable Instruments Act, the appellant (petitioner herein) would deposit 20% of the amount of the compensation imposed by the Trial Court within a period of 15 days from the date of the order.

It is the aforementioned order which is under challenge before this Court.

The learned counsel for the petitioner contended that the pre-condition as imposed to deposit 20% of the compensation amount was illegal. The Court had wrongly assumed that the said amendment to the Negotiable Instruments Act was mandatory, and thus, the impugned order was liable to be set aside to the extent that the 20% deposit as ordered as a pre-condition for his suspension of sentence should be quashed/done away with.

I have heard the learned counsel for the petitioner.

This Court in the case of 'M/s Ginni Garments and another Versus M/s Sethi Garments and another, 2019(2) RCR (Criminal) 833', has held as under:-

"1. This Order shall dispose of a bunch of 14 petitions, challenging the Orders passed by the Trial Courts in the trials under Section 138 of the Negotiable Instruments Act 1881(hereinafter referred to as'the Act'), whereby the Trial Courts have ordered the accused/petitioners to pay 20% or less of the cheque amount to the complainant under Section 143-A of the Act, as well as the petitions challenging the Orders passed by the Appellate Courts directing the convicts/appellants/petitioners herein to deposit 20% or more of amount of fine or compensation awarded by the Trial Court, during the pendency of the appeal, by exercising powers under Section 148 of the Act.

2. CRM-M-13039-2019,CRM-M-13892-2019,CRM-M-14462-2019 CRR-9872-2018 are the petitions wherein the Orders passed by the Trial Court under Section 143-

A of the Act are under challenge and the CRM-M-49024-2018, CRM-M-49216-2018, CRM-M-49054-2018, CRM- M-49055-2018, CRM-M-49182-2018, CRM-M-12625-2019, CRM-M- 15297-2019, CRM-M-61716-2018, CRR-721-2019, CRR-746-2019 are the petitions where in the Orders passed by the Appellate Court under Section 148 of the Act are under challenge.

3. It deserves to be noted that there is no dispute on facts of the case in either of the petitions. The Orders have been impugned in all these petitions only on purely legal ground that under Section 143-A and Section 148 of the Act, the Courts below cannot be deemed to have any authority, retrospectively, to pass the Order imposing the liability of payment of the amounts, mentioned in the impugned orders, in the pending trial or in the pending appeals.

4. Another aspect which deserves to be clarified at the outset is that the Orders impugned in these petitions have been passed by the Courts below by virtue of the powers conferred under Section 143-A of the Act during the trial, and under Section 148 of the Act during the pendency of appeal. Both these sections were not in existence in the Act earlier. Both these sections were added vide Amendment No.20 of 2018. In none of the petitions, the vires of these provisions are under challenge. Hence, this Court is proceeding on the presumption that the sections introduced by the Amendment Act, are validly operating law.

5. The only challenge raised by the respective petitioners, in all these petitions, is that since the Amendment Act has been enforced with effect from 02.08.2018, therefore, these provisions cannot be made applicable to the cases, where the trials for offence under Section 138 of the Act were already pending or where the appeals have arisen from such trials, which were pending on the date of the enforcement of these provisions. Hence, in essence, the grounds for challenge, in all the petitions, is that applying these provisions to the cases already pending before the Courts would tantamount to giving these provisions retrospective operation, although, the Amendment Act does not prescribe for retrospectivity in application of these provisions. Hence these provisions have to be taken as applicable only prospectively, to the cases which arise after introduction of these provisions.

6. Before proceeding further, it is apposite to take note of the provisions, which have been introduced by Section 143-A and Section 148 of the Act, which are as reproduced herein below:-

"143-A. Power to direct interim compensation---(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant---

• (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and • (b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section(1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial years, 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.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973(2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.

34. In view of the above discussion, it is quite clear that the procedure of recovery of fine or compensation from a convict-appellant of pending appeal already existed in CR.P.C; before advent of the provision as contained in Section 148 of the Act. Hence, no new aspect of coercive recovery of fine or compensation from the appellant is being created through this amended provision. On the contrary, this provision provides more breathing space to the convict/appellant; as compared to the other procedures of recovery, as contemplated under Sections 421 and 424 of Cr.P.C, 1973 which is for more onerous in terms of time limit and the consequences. Since the provisions for recovery of fine or compensation from the appellant/convict already existed in the existing procedure relating to the recovery, therefore, the provision introduced vide Section 148 of the Act; which relates only to recovery of amount partly, as interim measure, has to be treated purely procedural only, which is otherwise also beneficial for the appellant as compared to the pre-existing provisions. Hence it has to be held that provision of Section 148 of the Act shall govern all the appeals pending on date of enforcement of this provision or filed thereafter.

35. This Court does not find any substance in argument of learned counsel for the petitioners that since the object and reasons for introducing the amendment relate to giving benefit to the complainant and do not relate to the procedure of the appeal, therefore, it cannot be treated to be a procedural step. As is noted above irrespective of the object and reasons of the act, the bare language of the provision only authorizes the Court to pass an interim order, which is only in

modification of the procedure of recovery which already existed in the general provision of law relating to recovery of fine or compensation. Hence, for obvious reasons, the rationale qua objects and reasons of the Act, which is applicable at the stage of trial; cannot be imported to the stage of appeal. As mentioned above, at the stage of trial, the provision of Section 143-A of the Act has created a new 'obligation' against the accused, which was not contemplated by the existing law and which created a substantive liability upon him, whereas the provision of Section 148 of the Act only reiterated; and to some extent modified in favour of the appellant, the procedure of recovery already existing in the statute book. Still further, this Court does not find any force in the argument of the learned counsels for the appellants that Appellate Court could not have made the suspension of sentence of the petitioners conditional upon deposit of amount of interim compensation as ordered by Appellate Court. It deserves to be noted here that even suspension of sentence is in the judicial discretion of the Appellate Court. If the Appellate Court makes such judicial discretion subject to a statutory provision relating to deposit of interim compensation, then no fault could be found with such exercise of discretion. Moreover such a course of action even forms part of procedure prescribed under Section 424 Cr.P.C, 1973 though relating to a different type of suspension of sentence. But it shows that if the Appellate Court makes suspension of sentence subject to payment of statutory interim compensation or fine then such an order is in commensurance with the statutory provisions contained in Cr.P.C and the intention of legislatures as contained in Section 148 of the Act.

36. Accordingly all the petitions, wherein the order of the Trial Courts, directing the accused to deposit up to 20% of the cheque amount as interim compensation; are challenged, are allowed. Consequently, the Orders challenged in those petitions are set-aside.

37. The petitions where the challenge is to the order of the Appellate Court, directing the appellant to deposit 20% or more of the amount of fine or compensation as awarded by the Trial Court, are dismissed. Consequently, the Orders impugned in these petitions are upheld.

In Surinder Singh Deswal @ Col. S.S. Deswal and others Versus Virender Gandhi, the Hon’ble Supreme Court held as under:-

3. Feeling aggrieved and dissatisfied with the impugned common order passed by the High Court of Punjab and Haryana at Chandigarh, by which the High Court has dismissed the respective revision applications and has confirmed the order passed by the first appellate court – learned Additional Sessions Judge, Panchkula, directing the appellants herein – original appellants – original accused to deposit 25% of the amount of compensation, in view of the provisions of amended Act No. 20 of 2018 in Section 148 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the ‘N.I. Act’), the original appellants –original accused have preferred the present appeals.

8. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which Section 148 of the N.I. Act came to be amended and therefore amended Section 148 of the N.I. Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under Section 138 of the N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I.Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in Section 148 of the N.I. Act and while suspending the sentence in exercise of powers under Section 389 of the Cr.P.C., 1973 when the first appellate court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the N.I. Act.

8.1 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 N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused – appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused – appellant has been taken away and/ or affected.

Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.

9. 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 Cr.P.C., 1973 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

Sec 138 of the N.I. Act.

A perusal of the aforementioned judgments would clearly establish that the pre-condition as imposed by the Additional Sessions judge, Amritsar, vide order dated 03.02.2022 (Annexure P-1) cannot be found fault with, being legal and in consonance with the provisions of Section 148 of the Negotiable Instruments Act, 1881.

In this view of the matter, the present petition is dismissed.

