Surinder Singh Deswal @ Col. S. S. Deswal vs Virender Gandhi on 29 May, 2019

Equivalent citations: AIR 2019 SUPREME COURT 2956, AIRONLINE 2019 SC 327, 2019 CRI LJ 3507, (2019) 3 RECCRIR 186, 2019 ACD 813 (SC), (2019) 203 ALLINDCAS 113, (2019) 2 CURCC 443, (2019) 2 ALD(CRL) 261, (2019) 3 ICC 104, (2019) 2 ORISSA LR 433, (2019) 6 MAH LJ 451, 2019 (11) SCC 341, (2019) 2 NIJ 177, (2019) 2 UC 1288, (2019) 128 CUT LT 577, (2019) 2 CRIMES 385, (2019) 2 KER LT 985, (2019) 2 GUJ LH 788, 2019 (3) SCC (CRI) 461, (2019) 4 MPLJ 353, (2019) 4 CALLT 25, (2019) 3 CRILR(RAJ) 730, (2019) 2 KER LJ 983, (2019) 260 DLT 1, (2019) 3 PAT LJR 114, (2020) 1 CIVLJ 436, (2019) 2 BANKCAS 548, 2019 CRILR(SC MAH GUJ) 730, (2019) 3 CIVILCOURTC 1, (2019) 8 SCALE 445, (2019) 3 ALLCRILR 1, (2019) 109 ALLCRIC 955, (2019) 5 MH LJ (CRI) 404, 2019 (4) KCCR SN 372 (SC), AIR 2019 SC(CRI) 1057, (2019) 75 OCR 480

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Bench: A.S. Bopanna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.917-944 OF 2019
(Arising out of SLP(Criminal) Nos. 4948-4975/2019

Surinder Singh Deswal @ Col. S.S.Deswal
and others …Appellants

versus

Virender Gandhi …Respondent

JUDGMENT

M.R. SHAH, J.

Leave granted.

2. As common question of law and facts arise in this group of appeals and, as such, all these appeals, arise out of the impugned common judgment and order passed by the High Court, are being decided and disposed of together by this common judgment and order.

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.

4. The facts leading to the present appeals in nutshell are as under:

> That criminal complaints were filed against the appellants herein – original accused for the offence under Section 138 of the N.I. Act. That the said criminal complaints were filed prior to 2.8.2018. That the learned trial Court vide judgment and order dated 30.10.2018 convicted the appellants for the offence under Section 138 of the N.I. Act and sentenced them to undergo imprisonment of two years and to pay cheque amount + 1% as interest and litigation expenses as fine.
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> 4.1 Feeling aggrieved and dissatisfied with the order of conviction passed by the learned trial Court, convicting the appellants – original accused for the offence under Section 138 of the N.I. Act and the sentence imposed by the learned trial Court, the appellants – original accused have preferred criminal appeals before the first appellate Court – learned Additional Sessions Judge, Panchkula. In the said appeals, the appellants – original accused submitted application/s under Section 389 of the Cr.

P.C. for suspension of sentence and releasing them on bail, pending appeal/s.

4.2 That considering the provisions of amended Section 148 of the N.I. Act, which has been amended by Amendment Act No. 20/2018, which came into force w.e.f. 1.9.2018, the first appellate Court, while suspending the sentence and allowing the application/s under Section 389 of the Cr.P.C, directed the appellants to deposit 25% of the amount of compensation/fine awarded by the learned trial Court.

4.3 Feeling aggrieved by the order passed by the learned first appellate Court – learned Additional Sessions Judge, Panchkula directing the appellants – original accused – original appellants to deposit 25% of the amount of compensation/fine awarded by the learned trial Court, pending appeal challenging the order of conviction and sentence imposed by the learned trial Court, the appellants approached the High Court of Punjab and Haryana at Chandigarh by way of revision application/s.

4.4 It was the case on behalf of the appellants that Section 148 of the N.I. Act, as amended by Act No. 20/2018, shall not be applicable with respect to criminal proceedings already initiated prior to the amendment in Section 148 of the N.I. Act. 4.5 The High Court by a detailed judgment and order has not accepted the aforesaid contention and has dismissed the revision application/s and has confirmed the order passed by the learned first appellate Court – learned Additional Sessions Judge,

Panchkula directing the appellants □original appellants□original accused to deposit 25% of the amount of compensation awarded by the learned trial Court considering Section 148 of the N.I. Act, as amended.

4.6 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court in dismissing the revision application/s and confirming the order/s passed by the learned first appellate Court directing the appellants – original appellants – original accused to deposit 25% of the amount of compensation awarded by the learned trial Court under Section 148 of the N.I. Act, as amended, the original appellants – original accused have preferred the present appeals.

5. Shri Vijay Hansaria, learned Senior Advocate has appeared on behalf of the appellants – original appellants – original accused and Shri Alok Sangwan, learned Advocate has appeared on behalf of the original complainant.

5.1 Shri Vijay Hansaria, learned Senior Advocate appearing on behalf of the appellants has vehemently submitted that in the present case, both, the High Court as well as the learned first appellate Court have materially erred in directing the appellants to deposit 25% of the amount of compensation as per Section 148 of the N.I. Act, as amended.

5.2 It is vehemently submitted by the learned Senior Advocate appearing on behalf of the appellants that in the present case as the criminal proceedings were initiated and the complaints were filed against the accused for the offence under Section 138 of the N.I. Act, prior to the amendment Act came into force, Section 148 of the N.I.Act, as amended shall not be applicable. 5.3 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that the legal proceedings, whether civil or criminal, are to be decided on the basis of the law applicable on the date of the filing of the suit or alleged commission of offence by the trial Court or the appellate Court, unless the law is amended expressly with retrospective effect, subject to the provisions of Article 20(1) of the Constitution of India. In support of his above submission, learned Senior Counsel appearing on behalf of the appellants has heavily relied upon the decisions of this Court in the case of Garikapatti Veeraya v. N. Subbiah Choudhury, reported in AIR 1957 SC 540; and Videocon International Limited v. Securities and Exchange Board of India, reported in (2015) 4 SCC 33.

5.4 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that even otherwise in the present case, the first appellate Court has interpreted the word “may” as “shall” in Section 148 of the N.I. Act and proceeded on the basis that it is mandatory for the appellate Court to direct deposit of minimum of 25% of the fine or compensation awarded by the trial Court for suspension of sentence.

5.5 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that the first appellate Court heavily relied upon the decision of the Punjab and Haryana High Court in the case of M/s Ginni Garments and another v. M/s Sethi Garments (CRR No. 9872 of 2018, decided on 04.04.2019), in which it was held that the appellate Court continues to have discretion as

to the condition to be imposed or not to be imposed for suspension of sentence and it was further held that however in case discretion is exercised to suspend the sentence subject to payment of compensation/fine, such order must commensurate with Section 148 of the N.I. Act. It is submitted, however, in the present case, the appellate Court did not exercise discretion and proceeded on the assumption that it is mandatory to deposit 25% of the fine or compensation as a condition for suspension of sentence. It is submitted that therefore the High Court ought to have remanded the matter back to the appellate Court to decide on the question of suspension of sentence as per the decision in the case of M/s Ginni Garments (supra).

5.6 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that a similar view is taken by the Bombay High Court in the case of Ajay Vinodchandra Shah v. The State of Maharashtra (Criminal Writ Petition No. 258 of 2019). It is submitted that in the said decision, the Bombay High Court has also observed and held that as per Section 148 of the N.I. Act as amended, the appellate Court has the discretion to direct deposit the sum pending appeal, but if at all such direction is given, that sum shall not be less than 20% of the amount of fine or compensation awarded by the trial Court. It is submitted that in the present case, the appellate Court wrongly presumed that the requirement under Section 148 of the N.I. Act is the deposit of 25% of the fine or compensation.

5.7 It is further submitted by the learned Senior Advocate appearing on behalf of the appellants that in the present case the learned trial Court imposed the fine under Section 138 of the N.I. Act, equal to the amount of cheque plus 1%. It is submitted that as per Section 357(2) of the Cr.P.C., no such fine is payable till the decision of the appeal. It is submitted that therefore also the first appellate Court ought not to have passed any order directing the appellants to deposit 25% of the amount of fine/compensation, pending appeal/s. In support of his above submission, learned Senior Counsel has heavily relied upon the decision of this Court in the case of Dilip S. Dhanukar v. Kotak Mahindra Bank, reported in (2007) 6 SCC 528.

5.8 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeals and quash and set aside the impugned order passed by the first appellate court, confirmed by the High Court, by which the appellants are directed to deposit 25% of the amount of compensation considering Section 148 of the N.I. Act as amended.

6. While opposing the present appeals, Shri Alok Sangwan, learned Advocate appearing on behalf of the original complainant has vehemently submitted that the order passed by the first appellate Court directing the appellants to deposit 25% of the amount of compensation/fine pending appeal and while suspending the sentence imposed by the learned trial Court is absolutely in consonance with the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act. It is submitted that having found that because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of N.I. Act was being frustrated and having found that due to such delay tactics, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque, the Parliament thought it fit to amend Section 148 of the N.I. Act, which confers powers on the first appellate court to direct the appellant (the convict for

the offence under Section 138 of the N.I. Act) to deposit such sum which shall be minimum of 20% of the fine or compensation awarded by the trial court. It is submitted that therefore the High Court has rightly refused to interfere with the order passed by the first appellate court, which was just in consonance with the provisions of Section 148 of the N.I. Act as amended.

6.1 It is further submitted by the learned Advocate appearing on behalf of the original complainant that the submission on behalf of the appellants – original accused that Section 148 of the N.I. Act would not be made applicable retrospectively and shall not be applicable to the appeals arising out of the criminal proceedings which were initiated much prior to the amendment in Section 148 of the N.I. Act is concerned, it is vehemently submitted that the aforesaid submission has no substance. It is submitted that first of all amendment in Section 148 of the N.I. Act is procedural in nature and therefore there is no question of applying the same retrospectively. It is submitted that as such no vested right of the appeal of the appellants has been taken away or affected by amendment in Section 148 of the N.I. Act. It is submitted that in the present case, admittedly, the appeals were preferred after the amendment in Section 148 of the N.I. Act came into force and therefore Section 148 of the N.I. Act, as amended, is rightly invoked/applied by the learned first appellate Court. It is submitted that therefore the amendment so brought in the Act by insertion of Section 148 of the N.I. Act is purely procedural in nature and not substantive and does not affect the vested rights of the appellants, as such, the same can have a retrospective effect and can be applied in the present case also. 6.2 Now so far as the reliance placed on Section 357(2) of the Cr.P.C. and the submission of the learned Senior Advocate appearing on behalf of the appellants that in view of Section 357(2) of the Cr.P.C., fine during the pendency of the appeal is not recoverable is concerned, it is vehemently submitted that in the present case in Section 148 of the N.I. Act as amended, it is specifically stated that “Notwithstanding anything contained in the Code of Criminal Procedure, 1973.....”. It is submitted that therefore Section 148 of the N.I. Act as amended shall be applicable and it is always open for the appellate court to direct deposit of such sum, but not less than 20% of the amount of compensation/fine imposed by the learned trial court. 6.3 Making the above submissions, it is prayed to dismiss the present appeals.

7. We have heard the learned counsel for the respective parties at length.

7.1 The short question which is posed for consideration before this Court is, whether the first appellate court is justified in directing the appellants – original accused who have been convicted for the offence under Section 138 of the N.I. Act to deposit 25% of the amount of compensation/fine imposed by the learned trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under Section 389 of the Cr.P.C., considering Section 148 of the N.I. Act as amended?

7.2 While considering the aforesaid issue/question, the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, as amended by way of Amendment Act No. 20/2018 and Section 148 of the N.I. Act as amended, are required to be referred to and considered, which read as under:

"The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:—

(i) to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new section 148 in the said Act so as to provide that 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.

4. The Bill seeks to achieve the above objectives." "148. Power to Appellate Court to order payment pending appeal against conviction....

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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."

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., 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. 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.

10. Now so far as the submission on behalf of the appellants, relying upon Section 357(2) of the Cr.P.C. that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in the case of Dilip S. Dhanukar (supra) is concerned, the aforesaid has no substance. The opening word of amended Section 148 of the N.I. Act is that "notwithstanding anything contained in the Code of Criminal Procedure.....". Therefore irrespective of the provisions of Section 357(2) of the Cr.P.C., pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court.

In view of the above and for the reasons stated herein above, impugned Judgment and Order passed by the High Court does not call for any interference.

11. At this stage, learned Senior Advocate appearing on behalf of the appellants has requested to grant the appellants some more time (three months' time) to deposit the amount as per the order passed by the first appellate court, confirmed by the High Court. The said prayer is opposed by the learned Advocate appearing on behalf of the original complainant. It is submitted that as per amended Section 148 of the N.I. Act, the appellants – accused have to deposit the amount of compensation/fine as directed by the appellate court within a period of 60 days which can be further extended by a further period of 30 days as may be directed by the Court on sufficient cause being shown by the appellants. However, in the facts and circumstances of the case and considering the fact that the appellants were bonafidely litigating before this Court challenging the order passed by the first appellate court, in exercise of powers under Article 142 of the Constitution of India and in the peculiar facts and circumstances of the case and the amount to be deposited is a huge amount, we grant further four weeks' time from today to the appellants to deposit the amount as directed by the first appellate court, confirmed by the High Court and further confirmed by this Court.

12. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned common judgment and order passed by the High Court dismissing the revision application/s, confirming the order passed by the first appellate court directing the appellants to deposit 25% of the amount of fine/compensation pending appeals.

The instant appeals are accordingly dismissed with the aforesaid observations and appellants are now directed to deposit the amount directed by the first appellate court within extended period of four weeks from today.

.....J.

[M.R. SHAH]

NEW DELHI; .....J.
MAY 29, 2019. [A.S. BOPANNA]