Before Aman Chaudhary, J.

PRITPAL SINGH—*Petitioner*

versus

MALKIAT SINGH—*Respondent*

CRM-M No. 11088 of 2019

September 20, 2022

Code of Criminal Procedure, 1973 – S. 389, 482—Negotiable Instruments Act, 1881—S. 138, 148, 143A—impugned order imposing compensation on petitioners under S. 148 of N.I. Act challenged on ground that insertion of S. 148 vide amendment dated 1.9.2018 would not be applicable retrospectively on complaint filed in 2016—Held that considering the Statement of Objects and Reasons of the amendment in S. 148 is to address undue delay—Purposive interpretation of S. 148 must serve the objects and reasons of amended provision and S. 138—No substantive right of appeal affected by amended provision—S. 148 as amended to be applicable against order of conviction or sentence even if criminal complaint was filed prior to amendment—word "may" used in amended provision to be construed as "rule" or "shall"—conviction dated 4.2.2019 was after the amendment came into effect—present petition sans merit—impugned order requires no interference.

Held, that Hon'ble the Supreme Court of India in the case of Surender Singh Deswal (supra), while considering a number of judgments including the one relied upon by the petitioner herein, in case of Dalip S. Dahanukar (supra), has in no uncertain terms held that by way of the amended provision, no substantive right of appeal has been taken away and/or affected. It was further elucidatedly held that amended Section 148 of the Act is to be purposively interpreted in such a manner that it would serve the Objects and Reasons of not only amendment in Section 148 of the Act, but also Section 138 of the Act and the amended provision would apply to all appeals filed even prior 1.9.2018. A further interpretation to the language of the provision considering the amended Section 148 of the Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the Act, was given that the word "may" used in the amended Section 148 of the Act, to be construed as a "rule" or "shall" and in case the appellate Court was not to order to deposit, that would be as an exception, for which special reasons are to be assigned. (Para 12)

Further held, that the complaint in this case was filed in the year 2016, however, it is only after the amendment of Section 148 of the Act having come in effect from 1.9.2018, that the petitioner has been convicted vide judgment dated 4.2.2019, which became subject matter of challenge before the Appellate Court, wherein, the impugned order dated 22.2.2019, Annexure P-2 was passed.

(Para 13)

Further held, that in view of the facts and circumstances of the case as also the judgment in the case of Surender Singh Deswal (Supra) the present petition sans merit and the order impugned requires no interference.

(Para 14)

Naveen Bawa, Advocate, *for the petitioner* in CRM-M-11088-2019.

G.C. Shahpuri, Advocate, *for the petitioners* in CRM-M-11536-2019.

Manoj Pundir, Advocate, *for the petitioner* in CRM-M-19375 and 16728-2019.

Manipal Singh Atwal, DAG, Punjab.

Tushaar Madan, Advocate, for respondent in CRM-M-16728-2019.

Prateek Pandit, Advocate, for respondent No.2 in CRM-M-19375-2019.

AMAN CHAUDHARY, J.

(1) This order will dispose of the petitions bearing CRM-M-11088, 11536, 16728 and 19375-2019, filed under Section 482 Cr.P.C., wherein a common challenge is to the order whereby condition has been imposed by the appellate Court on the petitioners to deposit a part of compensation in view of Section 148 of the Negotiable Instruments (Amendment) Act, 2018, percentage of which is reflected in the respective orders passed in the aforesaid cases. For the purpose of deciding the present cases, the facts are being extracted from CRM-M-11088-2019.

(2) On behalf of the petitioner, the submission is that the insertion of Section 148 vide amendment dated 1.9.2018 in the Negotiable Instruments Act, 1881 vide which the drawer of the cheque

was made liable to deposit a part of compensation to the complainant would not be applicable in the present case inasmuch as the complaint was filed in the year 2016, which though came to be decided on 4.2.2019, appeal against which was filed and order imposing the condition to deposit 20% compensation amount which in the present case is Rs.50,000/-, was passed on 22.2.2019 by the Appellate Court. The amended provision could not be applied retrospectively to the complaint filed prior to the amendment. He further submits that the compensation has been awarded at the time of passing of the final judgment and not by way of interim compensation under Section 143A of the Act.

(3) Learned counsel for the petitioner has also submitted that the Appellate Court has also ignored the provisions of Section 389(1) Cr.P.C. while imposing the condition of depositing 20% compensation, which thus, is contrary to the provisions. Reliance is placed on the judgment of Hon'ble the Supreme Court of India in the case of ***Dalip S. Dahanuker*** *versus* ***Kotak Mahindra Co. Ltd. And another***[1], wherein the accused was convicted and sentenced to one month simple imprisonment and was directed to pay compensation of Rs.15 lakhs, the Hon'ble Supreme Court had suspended the sentence without payment of compensation.

(4) He has also placed reliance on the judgment of Hon'ble Rajasthan High Court in ***Mahendra Das Vaishnav*** *versus* ***The State of Rajasthan***[2], wherein it was held that no such pre condition of depositing part of compensation can be imposed by an appellate Court while exercising powers under Section 389(1) Cr.P.C.

(5) The learned counsel for the complainant-respondent in these cases has relied upon the judgment in the case ***Surender Singh Deswal @ Co. S.S. Deswal*** *versus* ***Virender Gandhi***[3], to submit that the impugned order was rightly passed and the petitioner is required to be deposit the part compensation as directed by the appellate court.

(6) Heard the learned counsel for the parties.

(7) For the adjudication of the present issue, it would be apposite to refer to Section 148 of the Act, which reads thus:-

"The Negotiable Instruments Act, 1881 (the Act) was

[1] (2007) 6 SCC528
[2] 2017(2) NIJ 592
[3] AIR (SC) 2956

> 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."

(8) Hon'ble the Supreme Court of India in case of ***Surender Singh Deswal*** *(supra),* dealt with appeals preferred on behalf of the accused, who had been convicted by the trial Court under Section 138 of the Act, feeling aggrieved and dissatisfied with the order of the High Court wherein their revision petitions were dismissed upholding the order passed by first appellate court directing them to deposit 25% of amount of compensation in view of the amended provision. The facts as noticed in the said judgment were that the ground raised to challenge to deposit of part compensation was that the criminal complaints were filed before the amendment Act No.20/2018 by which Section 148 of the Act came in to effect, as such said amendment would not be applicable. The Hon'ble Court observed in para 8 of the judgment that at the time when the appeals against the conviction were preferred the amending Section had come into force w.e.f. 1.9.2018. The relevant para 8 reads thus:-

> "8. Shri Balbir Singh, learned senior counsel appearing for the appellants questioning the order of the Additional Sessions Judge dated 20.07.2019 and judgment of the High Court submits that by mere non- deposit of 25% of the amount of compensation as directed on 01.12.2018 cannot result in vacation of suspension of sentence. Learned counsel submits that the direction to deposit 25% of the compensation as directed by the trial court could not have been made under Section 148 of the NI Act. Section 148 of the NI Act having come into force on 01.09.2018 could not have been relied by the Courts below. Since, the complaint

was filed in the year 2015 alleging offence under Section 138 of the NI Act which was much before the enforcement of Section 148 of the NI Act. He further submits that non-deposit of 25% ofthe amount of compensation could not lead to vacation of the order suspending the sentence rather it was open to the respondents to recover the said amount as per the procedures prescribed under Section 421 Cr. P.C."

(9) In the said judgment, the statement of objects and reasons of the amendment in Section 148 of the Act were referred. The para relevant inthis regard reads thus:-

"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 andCheques. The said Act has been amended fromtime 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 includingtrading 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.
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> 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."

(10) Hon'ble the Supreme Court while deciding the issue with regard to restrospectivity, held that the provisions of this Section shall govern the cases where the criminal complaints were filed prior to the dateof amendment i.e. 1.9.2018. The relevant para reads thus:

> 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 enactmentof 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 theappellants 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 interpretationof 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."

(11) With regard to the language used in Section 148 of the Act, Hon'ble the Supreme Court, has interpreted the word 'may' used in the aforesaid provision to be construed as a rule or shall keeping in view the statement of objects and reasons of amending the said section. Para relevant in this regard reads thus:-

> "9. Now so far as the submission on behalf of the appellants that even considering the language usedin Section 148 of the N.I. Act as amended, the appellate Court "may" order the appellant to deposit such sumwhich 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."

(12) Hon'ble the Supreme Court of India in the case of ***Surender Singh Deswal*** *(supra),* while considering a number of judgments including the one relied upon by the petitioner herein, in case of ***Dalip S. Dahanukar*** *(supra),* has in no uncertain terms held that by way of the amended provision, no substantive right of appeal has been taken away and/or affected. It was further elucidatedly held that amended Section 148 of the Act is to be purposively interpreted in such a manner that it would serve the Objects and Reasons of not only amendment in Section 148 of the Act, but also Section 138 of the Act and the amended provision would apply to all appeals filed even prior 1.9.2018. A further interpretation to the language of the provision considering the amended Section 148 of the Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the Act, was given that the word "may" used in the amended

Section 148 of the Act, to be construed as a "rule" or "shall" and in case theappellate Court was not to order to deposit, that would be as an exception, for which special reasons are to be assigned.

(13) It may be noted here that the complaint in this case was filed in the year 2016, however, it is only after the amendment of Section 148 of the Act having come in effect from 1.9.2018, that the petitioner has been convicted vide judgment dated 4.2.2019, which became subject matter of challenge before the Appellate Court, wherein, the impugned order dated 22.2.2019, Annexure P-2 was passed.

(14) In view of the facts and circumstances of the case as also the judgment in the case of ***Surender Singh Deswal*** *(Supra)* the present petition *sans* merit and the order impugned requires no interference.

(15) Learned counsel for the parties were however *ad idem* in so far as direction be issued to decide the appeals in a time bound manner, preferably within a period of one month.

(16) This Court refrains from issuing any time bound directions for deciding the appeal, however at the same time leaves it to the wisdom of the Appellate Court to take a decision for expeditious adjudication of the appeal pending before it, keeping in view, it having emerged from a complaint filed way back in the year 2016.

(17) All the revision petitions stand disposed of accordingly.

Divya Gurnay