SUPREME COURT OF INDIA

Before: Justice Ashok Bhushan and Justice M.R. Shah .

SURINDER SINGH DESWAL @ COL. S.S. DESWAL & ORS. APPELLANTS

versus

VIRENDER GANDHI & ANR.- RESPONDENTS

CRIMINAL APPEAL NOS.1936-1963 OF 2019

08.01.2020

Negotiable Instruments Act, 1881 S. 148 – Bail – Suspension – Cancellation - When suspension of sentence by the trial court is granted on a condition, non-compliance of the condition has adverse effect on the continuance of suspension of sentence – The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance – The order of the Additional Sessions Judge declaring that due to non- compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court – It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision – What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide – However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated. [Para 18, 19]

JUDGMENT

Ashok Bhushan, J.

These appeals have been filed against a common judgment of the Punjab and Haryana High Court dated 10.09.2019 dismissing 28 petitions filed by the appellants under Section 482 of Cr.P.C.

2. Brief facts of the case giving rise to these appeals are:

Appellant Nos. 1 and 2 are partners of appellant No.3, M/s. Bhoomi Infrastructure Co., now known as GLM Infratech Private Limited. Respondent No.1, Virender Gandhi, who was also a partner of the Firm retired with respect of which Memorandum of Understanding dated 30.11.2013 was entered into. A cheque No.665643 dated 31.03.2014 drawn on Canara Bank amounting to Rs.45,84,915/- was issued by the appellant to respondent No.1 against the part payment of the retirement dues. Similarly, 63 other cheques were issued by the appellants in favour of respondent arising out of the same transaction. On 06.04.2015, respondent No.1 deposited cheque No.665643 in his Bank that is Karnataka

Bank Ltd., Sector-11, Panchkula. The cheque was dishonoured and returned vide memo dated 07.04.2015 with the remarks “funds insufficient”. Other 63 cheques were also dishonoured.

3. Respondent No.1 sent the statutory demand notice under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “NI Act”) on 06.05.2015. Complaints were filed by respondent No.1 against the appellants under Section 138 of the NI Act before the Judicial Magistrate, Ist Class, Panchkula. In all 28 complaints were filed. The complaints were decided by Judicial Magistrate vide his judgment dated 30.10.2018 holding the appellant Nos.1 and 2 guilty for the offence punishable under Section 138 of the NI Act, who were accordingly convicted. By order dated 13.11.2018 the appellants were sentenced to undergo imprisonment for a period of two years and to pay jointly and severally an amount equal to the amount involved in the present case i.e. cheque amount plus 1% of this amount as interest as well as litigation expenses.

4. The appeal was filed by the appellants against the judgment dated 30.10.2018 and sentence dated 30.11.2018 in the Court of Sessions Judge, Panchkula. In the appeal the appellants had filed an application under Section 389 of Cr.P.C. for suspension of sentence. The learned trial court has suspended the sentence of the appellants by order dated 13.11.2018 for 30 days. The Appellate Court vide order dated 01.12.2018 entertained the appeal and suspended the sentence during the pendency of the appeal, subject to furnishing of bail bond and surety bond in the sum of Rs.50,000/- with one surety in the like amount and also subject to deposit of 25% of the amount of compensation awarded by the learned trial court in favour of the complainant. The appellants were directed to deposit the amount within four weeks by way of demand draft in the name of the Court.

5. The appellants were convicted in all 28 cases and the total amount to be deposited under the order of the Appellate Court was, in all cases, Rs.9,40,24,999/-. The appellants preferred an application seeking extension of time to deposit the amount of 25% of the compensation amount. The learned Sessions Judge allowed the application on 19.12.2018 granting time to deposit the amount till 28.01.2019. The appellants filed an application under Section 482 Cr.P.C. seeking quashing of the part of the order dated 01.12.2018 passed by the learned Additional Sessions Judge, Panchkula, whereby the said Court has imposed a condition to deposit 25% of the amount of compensation while suspending the sentence.

6. The High Court vide its judgment dated 24.04.2019 dismissed the petition of the appellants under Section 482 Cr.P.C. and other connected petitions. The appellants preferred Special Leave Petition(Criminal) Nos.4948-4975/2019 before this Court against the judgment dated 24.04.2019 of the High Court of Punjab and Haryana at Chandigarh.

7. This Court vide its judgment dated 29.05.2019 dismissed the criminal appeals arising out of the SLPs(Criminal). Learned Additional Sessions Judge, Panchkula in view of the non-compliance of the order dated 20.07.2019 directed the appellants to surrender in the trial court within four days. The appellants were also not present when the case was taken by the Additional Sessions Judge on 20.07.2019. Another petition under Section 482 Cr.P.C.

was filed by the appellants challenging the order dated 20.07.2019 passed by the Additional Sessions Judge. The 28 petitions under Section 482 Cr.P.C. filed by the appellants have been dismissed by the impugned judgment of the Punjab and Haryana High Court dated 10.09.2019. Aggrieved by which judgment these appeals have been filed by the appellants.

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% of the 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. Learned counsel for the appellants submits that this Court in Criminal Appeal No.1160 of 2019 (**G.J. Raja v. Tejraj Surana, 2019 PLRonline 3014**) decided on 30.07.2019 has held the provisions of Section 143A of NI Act to be prospective only that is to apply with respect to offence committed after insertion of Section 143A w.e.f. 01.09.2018. He submits that both Sections 143A and Section 148 inserted in NI Act by amendment Act

20 of 2018, hence Section 148 was not attracted in the present case which was only prospective and could have been utilised in offences which were committed after 01.09.2018. He has also placed reliance on the judgment of Bombay High Court in **Ajay Vinodchandra Shah vs. State of Maharashtra**, (2019) 4 Mah LJ 705 and another judgment of Punjab and Haryana High Court at Chandigarh **Vivek Sahni v. Kotak Mahindra Bank Ltd**., (2020-4)200 PLR 716.

10. We have considered the submissions of learned counsel for the parties and have perused the records.

11. The appellants had challenged the order dated 01.12.2018 passed by the Additional Sessions Judge, Panchkula by which while entertaining the criminal appeal of the appellants, Appellate Court has suspended the substantive sentence of the appellants subject to deposit 25% of the compensation awarded by the trial court in favour of the complainant. The petitions under Section 482 Cr.P.C. filed by the appellants questioning the order dated 01.12,2019 were dismissed by the High Court vide its judgment dated 24.04.2019 against which judgment the appellants have also filed SLP(Criminal)Nos.4948-4975 of 2019) which were dismissed by this Court on 29.05.2019. All arguments raised by the appellants questioning the order dated 01.12.2018 have been elaborately dealt with by this Court and rejected. The submissions regarding challenge to the order dated 01.12.2018 of the learned Additional Sessions Judge which have been

addressed before us have been considered by this Court and rejected. It is useful to refer paragraph 8., 8.1 and 9 of the judgment of this Court which are to the following effect:

"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 Code of Criminal Procedure 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 Code of Criminal Procedure, 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 Code of Criminal Procedure 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 Section 138 of the N.I. Act."

12. This Court having already upheld the order of the Appellate Court dated 01.12.2018 suspending the sentence subject to deposit 25% of the amount of compensation any submission questioning the order of the Appellate Court directing the suspension of sentence subject to deposit of 25% of the compensation amount needs no further consideration. By dismissal of the criminal appeals of the appellants on 29.05.2019 by this Court the challenge stands repelled and cannot be allowed to be reopened.

13. The second round of litigation which was initiated by the appellant by filing application under Section 482 Cr.P.C. was against the order dated 20.07.2019 passed by the Additional Sessions Judge, Panchkula by which Additional Sessions Judge held that the appellant having not complied with the direction dated 01.12.2018 to deposit 25% of the amount of compensation, the order of suspension of sentence shall be deemed to have been vacated. The order dated 20.07.2019 was an order passed by the Additional Sessions Judge on account of failure of the appellant to deposit 25% of the amount of compensation. The suspension of sentence on 01.12.2018 was subject to the condition of deposit of 25% of the amount of compensation, when the condition for suspension of sentence was not complied with, learned Additional Sessions Judge was right in taking the view that order of suspension of sentence shall be deemed to have been vacated. Challenge to order dated 20.07.2019 has rightly been repelled by the High Court by its elaborate and well considered judgment dated 10.09.2019.

14. Learned counsel for the appellant has placed reliance on the judgment of this Court dated 30.07.2019 in Criminal Appeal No.1160 of 2019 (**G.J. Raja v. Tejraj Surana, 2019 PLRonline 3014**). This Court in the above case was considering provisions of Section 143A of the N.I. Act which was inserted by the same Amendment Act 20 of 2018 by which Section 148 of the N.I. Act has been inserted. This Court took the view that Section 143A is prospective in nature and confined to cases where offences were committed after the introduction of Section 143A i.e. after 01.09.2018. In paragraph 22 of the judgment following has been held:

"22. In our view, the applicability of Section 143A of the Act must, therefore, be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143A, in order to force an accused to pay such interim compensation."

15. The judgment of this Court which was delivered in the case of the present appellants i.e. Criminal Appeal Nos.917-944 of 2019 (**Surinder Singh Deswal @ Col. S.S. Deswal v. Virender Gandhi**, **2019 SCeJ 765, 2019 PLRonline 7697**) (in which one of us M.R.Shah, J was also a member) was also cited before the Bench deciding the case of G.J. Raja. This Court in its judgment dated 29.05.2019 has rejected the submission of the appellants that Section 148 of N.I. Act shall not be made applicable retrospectively. This Court held that considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, on purposive interpretation of 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.

16. The Bench deciding **G.J. Raja's case** has noticed the judgment of this Court in the appellants' case i.e. Surinder Singh Deswal's case and has opined that the decision of this Court in Surinder Singh Deswal's case was on Section 148 of the N.I. Act which is a stage after conviction of the accused and distinguishable from the stage in which the interim compensation was awarded under Section 143A of the N.I.Act. When the Bench deciding

G.J. Raja's case (supra) itself has considered and distinguished the judgment of this Court in appellants' own case i.e. Surinder Singh Deswal's, reliance by the learned counsel for the appellants on the judgment of this Court in G.J. Raja's case is misplaced. It is useful to refer to paragraph 23 of the judgment in **G.J. Raja's case** which is to the following effect:

"23. We must, however, advert to a decision of this Court in ***Surinder Singh Deswal v. Virender Gandhi, 2019 SCeJ 765, 2019 PLRonline 7697, (2019) 8 SCALE 445*** *where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 01.09.2018 was held by this Court to be retrospective in operation. As against Section 143A of the Act which applies at the trial stage that is even before the pronouncement of guilt or order of conviction, Section 148 of the Act applies at the appellate stage where the Accused is already found guilty of the offence Under Section 138 of the Act. It may be stated that there is no provision in Section 148 of the Act which is similar to Sub-Section (5) of Section 143A of the Act. However, as a matter of fact, no such provision akin to Sub-section (5) of Section 143A was required as Sections 421 and 357 of the Code, which apply post-conviction, are adequate to take care of such requirements. In that sense said Section 148 depends upon the existing machinery and principles already in existence and does not create any fresh disability of the nature similar to that created by Section 143A of the Act. Therefore, the decision of this Court in* ***Surinder Singh Deswal*** *(****2019 SCeJ 765, 2019 PLRonline 7697)*** *stands on a different footing."*

In view of the above, the judgment of this Court in the case of G.J. Raja does not help the appellants.

17. The judgment of Punjab and Haryana High Court in **Vivek Sahni and another**(supra) which has been relied by the learned counsel for the appellants has been noted and elaborately considered by the High Court in the impugned judgment. In paragraph 14 and 15 of the impugned judgment of the High Court reasons have been given for distinguishing the **Vivek Sahni' case**.

18. The High Court is right in its opinion that question No.2 as framed in **Vivek Sahni's case** was not correctly considered. When suspension of sentence by the trial court is granted on a condition, non- compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non- compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.

19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.

20. Insofar as the judgment of the Bombay High Court in **Ajay Vinodchandra Shah** (supra) which has been relied by the learned counsel for the appellant, it is sufficient to observe that the High Court did not have benefit of judgment of this Court dated 29.05.2019 in **Surinder Singh Deswal's case (2019 SCeJ 765, 2019 PLRonline 7697**). The judgment of the Bombay High Court was delivered on 14.03.2019 whereas judgment of this Court in appellants' case is dated 29.05.2019. In view of the law laid down by this Court in Surinder Singh Deswal's case decided on 29.05.2019 (2019 SCeJ 765, 2019 PLRonline 7697), the judgment of Bombay High Court in **Ajay Vinodchandra Shah's case** cannot be said to be a good law insofar as consequences of non-compliance of condition of suspension of sentence is concerned.

21. It is further to note that even Bombay High Court while modifying the direction to deposit 25% of the amount of total compensation directed the accused to deposit 20% of the amount of compensation within 90 days.

22. In view of the foregoing discussion, we do not find any merit in the submission of the appellants. The appeals are dismissed.