HIGH COURT OF UTTARAKHAND
Bench: Justice Ravindra Maithani
Date of Decision: 17th May 2024
Case No. :
Criminal Revision No. 105 of 2024

REVISIONIST:
Mohd. Anwaar …..Revisionist

VERSUS

RESPONDENTS:
State of Uttarakhand and Another …..Respondents

Legislation:
Section 138 of the Negotiable Instruments Act, 1881
Section 148 of the Negotiable Instruments Act, 1881

Subject: Criminal revision challenging the order of the Additional Sessions Judge which, while admitting the revisionist to bail, directed him to deposit 20% of the fine amount within 60 days. The primary contention is whether the deposit requirement under Section 148 of the Negotiable Instruments Act is mandatory or discretionary.

Headnotes:

Negotiable Instruments Act – Bail Conditions – Revisionist challenged the order directing him to deposit 20% of the fine amount for bail – Contention that the deposit is not mandatory but directory – Additional Sessions Judge's order considered lawful and not mechanical – Revision dismissed [Paras 1-16].

Section 148 of the Negotiable Instruments Act – Judicial Discretion – Emphasized the court's discretion in ordering deposit under Section 148 – Referenced Surinder Singh Deswal and Jamboo Bhandari cases to underline that deposit conditions can be relaxed in exceptional cases – Held that the lower court appropriately exercised discretion, requiring no interference [Paras 7-14].

Decision – Revision Dismissed – Held – Conditions imposed for bail justified – Revisionist's previous attempts to delay proceedings noted – Appeal for

reduction in pre-deposit amount rejected – Order of lower court upheld [Paras 15-16].

Referred Cases:

- Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341
- Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited and Others, (2023) 10 SCC 446
- Amit Kumar v. State of Haryana, CRL No.20603 of 2022
- Mohd. Anwar v. Subhash Chandra Kainthola, Criminal Misc. Application No.496 of 2017

Representing Advocates:

Mr. P.C. Petshali, Advocate for the revisionist
Mr. M.A. Khan, A.G.A. with Mr. Vipul Painuly, Brief Holder for the State
Mr. M.S. Bhandari, Advocate for the respondent no.2

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this revision is made to the order dated 06.01.2024, passed in Criminal Appeal No.01 of 2024, Mohd. Anwaar Vs. State of Uttarakhand and Another, by the court of Additional Sessions Judge, Kotdwar, District Pauri Garhwal. By it, while admitting the revisionist to bail, he was directed to deposit 20% of the amount of fine within 60 days since then.

2. Heard learned counsel for the parties and perused the record.

3. The revisionist was convicted under Section 138 of the Negotiable Instruments Act, 1881 ("the Act") on 16.12.2023, in Criminal Case No.738 of 2015, Subhash Chandra Kainthola Vs. Mohd. Anwaar, by the court of Additional Chief Judicial Magistrate, Kotdwar, District Pauri Garhwal. He was sentenced to 1 year imprisonment and a fine of Rs. 18,40,000/-. The court has also directed for compensation from the amount of fine.

4. The order dated 16.12.2023 was challenged by the revisionist in appeal. He also moved an application for bail. By the impugned order dated 06.01.2024, as stated, while admitting the revisionist to bail, the court also directed him to deposit 20% of the amount of fine within 60 days since then.

5. Learned counsel for the revisionist would submit that the deposition of 20% of fine is not mandatorily required for admitting the revisionist, in such cases, to bail. He would submit that it is directory. This aspect was not considered by the court below, and, in fact, the respondent was not heard on this aspect; the respondent no.2 did not file any application for that purpose also.

6. Learned counsel for the respondent no.2 would submit that it is mandatory under Section 148 of the Act for the revisionist to deposit 20% of the amount of fine. He would also submit that this is the third round of litigation. Earlier, in a C482 petition, filed by the revisionist, Rs.10,000/- cost was also imposed on him. He would refer to the judgment and order dated 05.09.2022, passed by this Court in Criminal Misc. Application No.496 of 2017, Mohd. Anwar Vs. Subhash Chandra Kainthola,("the C482 petition") by which the challenging to the summoning order was declined and a cost of Rs. 10,000/- was imposed on the revisionist. He would submit that this is delaying tactics adopted by the revisionist now.

7. Section 148 of the Act reads as hereunder:-

148. Power of 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. In the case of Surinder Singh Deswal Vs. Virender Gandhi, (2019) 11 SCC 341, the Hon'ble Supreme Court interpreted the word 'may', as used under Section 148 of the Act, and in Para 8, observed as follows:-

8. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the NI Act as amended, the appellate court "may" order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court and the word used is not "shall" and therefore the discretion is vested with the first appellate court to direct the appellant-accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, though it is true that in the amended Section 148 of the NI Act, the word used is "may", it is generally to be construed as a "rule" or "shall" and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended Section 148 of the NI Act confers power upon the appellate court to pass an order pending appeal to direct the appellant-accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the appellant-accused under Section 389 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the NI Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 of the NI Act is purposively interpreted in such a manner it would serve

the Objects and Reasons of not only amendment in Section 148 of the NI Act, but also Section 138 of the NI Act. The Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonour of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, Parliament has thought it fit to amend Section 148 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the NI Act and also Section 138 of the NI Act.

9. Subsequent to it, in the case of Jamboo Bhandari Vs. Madhya Pradesh State Industrial Development Corporation Limited and Others, (2023) 10 SCC 446, the Hon'ble Supreme Court interpreted this aspect further and observed as follows:-

6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the appellate court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when the appellate court considers the prayer under Section 389CrPC of an accused who has been convicted for offence under Section 138 NI Act, it is always open for the appellate court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the appellate court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.

10. In the impugned order, the court has taken notice of the principles of law, as laid down in the case of Jamboo Bhandari (*supra*). In a mechanical manner, the revisionist was not directed to deposit 20% of the amount of fine within 60 days, since then. After hearing the parties and considering the law on the subject, the impugned order has been passed.

11. The question is as to whether the discretion that is vested in the court under Section 148 of the Act has been exercised judiciously or not? The Court wanted to know from learned counsel for the revisionist as to why the revisionist should not be directed to pay 20% of the amount of fine, while admitting him to bail? He would submit that the manner in which the order is passed reflects that the court was adamant to direct the revisionist to deposit 20% of the amount of fine.

12. This may, perhaps, not be true. The perusal of the impugned order reveals that the court has quoted the arguments that were made on behalf of the revisionist and the principles of law, as laid down in the case of Amit Kumar Vs. State of Haryana, in CRL No.20603 of 2022, decided by the Hon'ble Punjab and Haryana High Court and the principles of law, as laid down in the case of Jamboo Bhandari (*supra*), and after considering, the court did not find it a case fit in which sentence may be suspended without pre deposit of the 20% amount of the fine. Nothing has been shown as to why the amount should be reduced.

13. It is admitted that twice before, the revisionist had approached this Court. First, when the summoning order was challenged by him in the C482 petition, which was rejected with the cost of Rs. 10,000/-, and, secondly, it is stated by learned counsel for the respondent no.2, that the revisionist had filed a Transfer Application No.10 of 2023, which was subsequently withdrawn by him when the matter was decided. This fact is not in dispute.

14. On facts, according to the complaint of the respondent no.2, a deal of property was settled with the revisionist by the respondent no.2 for Rs. 8,21,000/-, on which Rs. 99,000/- damages were also added. Therefore, for total Rs. 9,20,000/-, the revisionist had given a written text also to the respondent no.2, and, subsequently, in discharge of his liabilities for payment of Rs. 9,20,000/-, as per complaint, the revisionist gave a cheque of that amount on 21.06.2015, which, when presented, was dishonoured. It is not even stated before this Court that the revisionist is not in a position to pay this amount. Nothing has been brought even to the notice of this Court that the right to bail of the revisionist may be defeated if the condition of deposition of 20% of the amount of fine remains unchanged. As stated, the court below has considered the law, and, thereafter, declined to reduce the amount of the pre-deposit.

15.Having considered, this Court does not find any merit to make

any interference in this revision. Accordingly, the revision deserves to be dismissed.

16. The revision is dismissed.