

Amendment to Section 148 of Negotiable Instruments Act has Retrospective Effect holds SC

written by Richa K Gaurav | June 14, 2019

Amendment to Section The Bench comprising of Justice M. R. Shah and Justice A. S. Bopanna of Hon'ble Supreme Court of India in the judgement dated 29th May, 2019 in the matter of '*Surinder Singh Deswal @ Col. S.S. Deswal & others Versus Virender Gandhi*' [1] have held that 'purposive interpretation' to be accorded to Section 148 Negotiable Instruments Act, 1881 ("N.I. Act") as inserted by Negotiable Instruments (Amendment) Act, 2018 (20 of 2018) ("amendment") and is applicable retrospectively and shall be applicable qua appeals against order of conviction and suspension of sentence for offence under Section 138 N.I. Act even if the complaints were filed prior to the amendment i.e. prior to 01.09.2018. Resultantly, a minimum of 20% of the fine or compensation awarded by the trial court may be directed to be deposited pending appeal by the appellate court.

FACTS:

The criminal

complaints under section 138 N.I. Act were filed against the appellants (original accused) prior to 01.09.2018 and the Learned Trial Court convicted them vide judgement and order dated 30.10.2018 and sentenced them to undergo two years of imprisonment, directed them to pay the cheque amount and also imposed fine of 1 % of the cheque amount towards interest and litigation expenses.

Aggrieved

and dissatisfied by the trial court's order, the appellants (original accused)

preferred Criminal Appeals before Learned Additional Sessions Judge, Panchkula

(First Appellate Court) along with application under section 389 Code of Criminal Procedure, 1973 ("Cr.P.C.") for suspension of sentence and release on

bail pending appeal(s).

Learned

Additional Sessions Judge while allowing the application u/s 389 Cr.P.C. suspended the sentence pending appeal and directed the appellant(s) to deposit

25% of the compensation/fine awarded by the learned trial court in the light of

amended section 148 N.I. Act that came into force on 01.09.2018.

The

appellants moved Hon'ble High Court of Punjab and Haryana invoking revisional jurisdiction against the order directing 25% of the compensation/fine to be deposited contending that the amendment shall not be applicable on the complaints initiated prior to the amendment. However, Hon'ble High Court while

rejecting the contention dismissed the revision petition and confirmed the orders passed by first appellate court.

Aggrieved by

the orders of the Hon'ble High Court passed in the Revision Petition the appellant(s) preferred the present appeal(s) before the Hon'ble Supreme Court of India. The common question of law and facts arose from impugned common

judgment, therefore, sting of appeals arising out of impugned common judgment were decided and disposed of together by the apex court.

ISSUES:

The Hon'ble Supreme Court considered the following Question of Law and facts:

1. Whether the first appellate court is justified in directing the appellants (original accused) to deposit 25% of the compensation/fine awarded by the learned trial court while convicting them under section 138 of N.I. Act pending appeal while allowing application under section 389 Cr.P.C. in light of amended section 148 N.I. Act?

SUBMISSIONS:

Learned Senior

Counsel appearing on behalf of the Appellant submitted that First Appellate Court 'materially erred' in directing the appellant(s) to deposit 25% of the compensation/fine awarded by the trial court in light of amended section 148 of

the N.I. Act as the same came into effect after the filing of the complaint, henceforth, there can be no retrospective effect in the instant matter. It was

further vehemently contended that both civil and criminal proceedings ought to

be decided by the courts (trial/appellate) on the basis of law applicable on the date of filing of suit/alleged commission of offence unless the amended law

is expressly given retrospective effect subject to provisions of Article 20(1)

of Indian Constitution that prohibits conviction of person for an offence except for violation of law in force at the time of commission of offence and further prohibits imposition of penalty greater than which might have been inflicted under the law in force at the time of commission of offence.

Learned

Senior Counsel for the appellant further submitted that the Learned Appellate Court misinterpreted the word 'may' as 'shall' in section 148 N.I. Act thereby proceeded

on the basis that it was mandatory to direct to deposit 25% of compensation/fine awarded by the trial court for suspension of sentence pending

appeal. He further submitted that as per Section 357(2) Cr.P.C. during pendency

of appeal fine imposed is not recoverable.

The appellants

placed reliance upon the decision of Hon'ble Punjab and Haryana High Court pronounced in "M/s Ginni Garments and

Anr. versus Sethi Garments"[2] on

04.04.2019 wherein it was held that appellate courts have discretion as to what

conditions are/are not to be imposed during suspension of sentence and if at all discretion is exercised and order to deposit fine/compensation is ordered the same must commensurate with provisions of section 148 N.I. Act. The reliance was also placed upon the decision pronounced by Hon'ble Bombay High Court in "Ajay Vinodchandra Shah versus

The State of Maharashtra"[3]

wherein it was held the appellate court has discretion to direct to deposit sum pending appeal however, the same shall not be less than 20% of the amount of compensation/fine awarded by the Trial Court. Resultantly, Learned Senior Counsel contended that appellate court failed to exercise discretion and assumed that it was mandatory to deposit 25% of the fine/compensation pending appeal

as pre-condition to suspension of sentence and therefore, prayed to allow appeal and quash the impugned order passed by first appellate court.

On the

contrary Learned Counsel for the original complainant while vehemently opposing

the appeal contended that amendment to section 148 N.I. Act is merely procedural in nature that neither takes away nor affects vested right to appeal

therefore, amended section 148 N.I. Act was rightly invoked by the first appellate court. It was further contended qua provisions of Section 357(2) Cr.P.C. that amended Section 148 N.I. Act categorically states

"Notwithstanding anything contained in the

Code of Criminal Procedure, 1973....." meaning thereby amended provisions of N.I. Act shall prevail over the provisions of Cr.P.C. as it is settled position

in law that *generalia specialibus non derogant*.

It was further contended that the amended provisions are not substantive in nature and can be applied retrospectively, therefore, it is always open for the appellate court to direct to deposit any such amount but not less than 20% of the amount of compensation/fine awarded by the trial court.

JUDGMENT:

The Hon'ble

Supreme Court while deciding the issue referred to and considered 'Statement of

Objects and Reasons' of the amendment in section 148 N.I. Act and observed that

N.I. Act has been amended time to time to cater to changing needs so as to defeat delay tactics of unscrupulous drawers of dishonoured cheques on account

of easy filing of appeals and obtaining stay, resultantly, such delays compromise the sanctity of cheque transactions. Therefore, such amendments are

necessary to strengthen the credibility of cheques to smoothen trade and commerce and discourage frivolous and unnecessary litigation.

The Hon'ble Bench

further observed that amended Section 148 N.I. Act was into force on date of preferring appeal, on the date of order to deposit 25% of the compensation/fine

awarded by the trial court and of suspension of sentence pending appeal was passed

and held that impugned order was absolutely in consonance with the Statement of

Objects and Reasons of amendment in Section 148 N.I. Act.

It was

further held that though the word 'may' is used in the amended section but the

same is to be construed as 'rule' or 'shall' and no direction to deposit by the

appellate court is exception to general rule and special reasons must be assigned for such order; as far as section 357(2) Cr.P.C. is concerned the answer lies within the opening words "*Notwithstanding*

anything contained in the Code of Criminal Procedure, 1973....." of the amended section 148 N.I. Act.

The Hon'ble

Bench also observed that 'purposive interpretation' to be accorded to the amendment so as to not defeat and frustrate the purpose of the amendment, Section 138 and Section 148 N.I. Act and held that section 148 N.I. Act as amended shall be applicable in respect of the appeals against order of conviction and sentence under section 138 N.I. Act even when the complaints under section 138 N.I. Act were filed prior to amendment Act No. 20/2018.[4] Therefore, Hon'ble Apex Court neither found any irregularity or error in the impugned order passed by the first appellate court and confirmed by the Hon'ble

High Court.

CONCLUSION:

The Hon'ble Supreme Court harmoniously balanced the principles of natural justice and legislative intent to safeguard the interests of the drawee, as the amendment has been carried out to keep the sanctity of cheque transactions intact, defeat the delaying tactics of the unscrupulous drawer and to prevent wastage of time and resource of both courts and individuals. It is noteworthy to point out that by way of amended section 148 N.I. Act, the legislative intent is not only to safeguarded the interest of the drawee but also of drawer. It can be rightly concluded that purposive interpretation adopted by the Hon'ble Supreme Court serves the purpose of amendment in true letter and spirit.

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[1] Criminal Appeal Nos. 917-944 of 2019

[2] CRR

No. 9872 of 2018

[3]

CrI. W. P. 258 of 2019

[4] Para 8.1 of Criminal Appeal Nos. 917-944 of 2019

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