

Neutral Citation No. - 2024:AHC-LKO:26822
Reserved on 15.03.2024
Delivered on 02.04.2024
A.F.R.

Court No. - 27

Case :- MATTERS UNDER ARTICLE 227 No. - 1228 of 2024

Petitioner :- Mangla Prasad Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Petitioner :- Lal Bahadur Khan

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Sri Lal Bahadur Khan, learned counsel for the petitioner, Sri Hari Shanker Bajpai, learned A.G.A.-I for the State and perused the record.

2. In view of the order proposed to be passed, notice to opposite party No.2 is hereby dispensed with as purely legal question is involved in this case, however, learned A.G.A-I for the State has accepted notice on behalf of State-opposite party No.1.

3. The instant writ petition has been filed with following main prayer:-

"1. Issue an order or direction setting aside the impugned order dated 29.02.2024 passed by learned Sessions Judge, Faizabad in Criminal Appeal No.12 of 2024 (Mangla Prasad Singh Vs. Shanti Roller Mills Ltd. to the extent by which the learned Appellate Court despite admitting the appeal has declined to stay the operation of the impugned order dated 16.02.2024 passed by the learned Trial Court and thereby has rejected the stay application (Paper No. 5-B) as contained in Annexure No.1 to the petition."

4. Learned Counsel for the petitioner submitted that initially, the present opp. party no. 2 filed a complaint U/S 138 of Negotiable Instruments Act, 1881 read with Section 406/420 I.P.C against the petitioner in the Court of Additional Chief Judicial Magistrate-Ist Faizabad on 25.02.2014 with allegations that complainant was a company registered under the provisions of Indian Companies Act 1956, which was carrying out the business of

manufacturing and sales of Poultry Feed through their unit situated at Plot No. B-1 to B-6 Industrial Area Site No.-1 Post-Haripur Jalalabad, Lucknow Road, P.S-Cantt Distt.-Faizabad (Now Ayodhya). It was further alleged that the present petitioner Mangal Prasad Singh purchased the Poultry Feed with the complainant company as per terms settled between the parties and handed over a cheque bearing number "394990" dated 15.12.2013 amounting to Rs. 300000/- drawn on State Bank of India Babatpur, Varanasi but when the same was presented for clearing by the complainant company in HDFC Bank Ltd. Faizabad, then the same was dishonoured by State Bank of India, Branch-Babatpur Varanasi on the ground of insufficient fund. It was also alleged that despite giving notice on 13.01.2014, the accused/petitioner failed to make payment of due amount, thereafter, the complainant filed the complaint U/S 138 of Negotiable Instruments Act read with Section 406/420 I.P.C in the Trial Court on 25.02.2014.

5. Learned Counsel for the petitioner further submitted that the petitioner contested the matter before the Trial Court and also filed his written submission on 15.02.2017 in the Trial Court stating therein the true and full facts it was also averred that initially, a Saving Bank account pertaining to the petitioner State Bank of India, Branch-Babatpur Varanasi in respect of which a cheque was issued by the petitioner to the present opp. party no. 2 towards guarantee/security money but when the said account was closed and the petitioner opened new account in State Bank of Bikaner & Jaipur, Branch Babatpur Varanasi, then the petitioner made payments to the present opp. party no. 2 from his new account on 14.05.2013 of Rs. 200028/-, on 03.06.2013 of Rs. 40000/-, on 17.07.2013 of Rs. 25000/-, on 19.08.2013 of Rs. 30000/-, on 27.09.2013 of Rs. 25000/-, on 11.11.2013 of Rs. 25000/- on 24.10.2014 of Rs. 35000/-, on 21.04.2014 of Rs. 20000/- & on 03.07.2014 of Rs. 20000/- but the opp. party no. 2 despite having full knowledge of closure of the first account, submitted the previous cheque which was given by the petitioner towards guarantee/security money. Although, the petitioner had issued a cheque towards guarantee/security money from his new account to

opp. party no.2 and as such there was no malafide intention on the part of the petitioner.

6. Learned Counsel for the petitioner further submitted that the Trial Court i.e. First Additional Chief Judicial Magistrate Ayodhya without considering the legal and factual aspects of the matter, illegally and erroneously vide impugned judgment and order dated 16.02.2024 convicted the petitioner and awarded sentence of three months simple imprisonment U/S 138 of Negotiable Instruments Act 1881 and also imposed fine of Rs. 4,00,000/-. The Trial Court further provided that out of total fine an amount of Rs. 390000/- shall be given to the complainant/present opp. party no. 2 U/S 357 of Cr.P.C as damages and rest of the amount of fine of Rs. 10000/- shall be deposited in Court and in case of non deposition of amount of fine the accused shall serve one month further imprisonment.

7. Learned Counsel for the petitioner further submitted that against the order of conviction passed by the Trial Court remedy of filing Statutory Appeal is provided to the accused person U/S 374 Cr.P.C and as such the petitioner/accused preferred Statutory Appeal on 29.02.2024 in the Court of District & Sessions Judge Faizabad. It is further stated that along with the Memo of Appeal the petitioner/appellant moved two applications one for granting bail to the appellant/accused during pendency of the appeal and other for staying the operation of the order dated 16.02.2024 passed by the Trial Court.

8. Learned Counsel for the petitioner further submitted that as per Section 148(1) of The Negotiable Instruments Act 1881, which has been inserted in the Act through Negotiable Instruments (Amendment) Act, 2018 (Act No 20 of 2018) it has been provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction U/S 138, the Appellate Court may order the Appellant to deposit such sum which may shall be a minimum of twenty percent 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 U/S 143A.

9. Learned Counsel for the petitioner further submitted that in Section 148(2) it has also been provided that the amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

10. Learned Counsel for the petitioner further submitted that the Learned Appellate Court although vide order dated 29.02.2024 has been pleased to admit the appeal and also to allow the Bail Application but by the same order despite admitting the appeal erroneously decline to stay the operation of the impugned order dated 16.02.2024 passed by the Trial Court and thereby, rejected the Stay Application (Paper No. 5B) and further directed the appellant to deposit the amount of fine imposed by the Trial Court within a period of 10 days from the date of the order and also provided that in case non-deposition of fine by the appellant, the bail order shall stand automatically cancelled.

11. Learned Counsel for the appellant further submitted that the Appellate Court while passing the impugned order dated 29.02.2024 by which it has declined to stay the operation of the order passed by the Trial Court, has failed to consider the Statutory Provisions as enshrined U/S 148(1) & 148 (2) of The Negotiable Instruments Act 1881, which resulted in miscarriage of justice.

12. Learned Counsel for the petitioner further submitted that the impugned order dated 29.02.2024 by which the Appellate Court has provided that in case of failure of deposition of fine by the appellant, the Bail Order shall stand automatically cancelled is punitive in nature and is against the settled proposition of law as it is settled propositions of law, that if any appeal is presented by the appellant and the same is admitted by the Appellate Court, in that event it is also obligatory for the Appellate Court to stay the operation of

the impugned order under appeal during pendency of the appeal, thus, if any order is challenged and the appeal is pending, one cannot permit a swinging pendulum continuously taking place during pendency of the appeal. He further submitted that by non staying the operation of the impugned order by the Appellate Court, serious far reaching Civil Consequences may arise and the same may be detrimental to the interest of the appellant/petitioner, for which there is no justification.

13. Learned Counsel for the petitioner further submitted that the impugned order dated 29.02.2024 to the extent by which the Appellate Court has declined to grant stay order has caused serious prejudice to the petitioner and as such the necessity of filing the present petition invoking the Supervisory Jurisdiction conferred under Article 227 of The Constitution of India has arisen, thus, he submitted that it is necessary and expedient in the interest of justice that the operation of the impugned order dated 29.02.2024 passed by the Appellate Court as well as the recovery of fine to the tune of Rs. 400000/- as imposed by the Trial Court may kindly be stayed during pendency of the present petition in the Hon'ble Court, otherwise the petitioner would suffer an irreparable loss.

14. Learned A.G.A-I for the State-opposite party No.1 did not oppose the contentions made on behalf of the petitioner as learned Counsel for the petitioner has rightly pointed out illegality in the impugned order and has supported his contentions with the laws laid down by Hon'ble the Supreme Court of India and submits that the Appellate Court has failed to consider the Statutory Provisions as enshrined U/S 148(1) & 148 (2) of The Negotiable Instruments Act 1881, which resulted in miscarriage of justice.

15. I have heard learned Counsel for the parties and perused the material placed on record.

16. Before entering into the merits of the case, it would be relevant to discuss Section 148 of The Negotiable Instruments Act 1881, which has been inserted in the Act through Negotiable Instruments (Amendment) Act, 2018

(Act No 20 of 2018) to provide, *inter alia*, speedy disposal of cases relating to dishonour of cheques so as to see that due to delay tactics by unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay in proceedings, injustice caused to payee of dishonoured cheque who has spent considerable time and resource in court proceedings to realise value of cheque, thus, having observed that such delay has compromised sanctity of cheque transaction, Parliament thought it fit to amend Section 148. Purposive interpretation of Section 148 would be in furtherance of Objects and Reasons of amendment of Section 148 and also Section 138 of the Negotiable Instruments Act, 1881. Section 148 of The Negotiable Instruments Act 1881, which has been inserted in the Act through Negotiable Instruments (Amendment) Act, 2018 (Act No 20 of 2018) is reproduced hereunder:-

"Section-148 Power of Appellate Court to order payment pending appeal against conviction

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

17. As per Section 148(1) of the Negotiable Instruments Act 1881, which has been inserted in the Act through Negotiable Instruments (Amendment) Act, 2018 (Act No.20 of 2018) it has been provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction U/S 138, the Appellate Court may order the Appellant to deposit such sum which may shall be a minimum of twenty percent 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 U/S 143A.

18. As per Section 148(2) it has also been provided that the amount referred to in Sub-section (1) shall be deposited within sixty days from the date of the order, or within such period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

19. In the instant case, the Appellate court although vide order dated 29.02.2024 had admitted the appeal and also allowed the Bail Application moved by the appellant/petitioner but by the same order despite admitting the appeal preferred by the appellant/petitioner had erroneously rejected the stay and operation of the impugned order dated 16.02.2024 passed by the trial court and thereby, rejected the stay application (Paper No.5B) and further directed him to deposite amount of fine imposed by the trial court within a period of ten days' from the date of the order and also provided that in case of non-deposition of fine by the appellant/petitioner, the order of granting bail to the appellant/petitioner shall stand automatically cancelled, thus, the appellate court while passing the impugned order dated 29.02.2024 by which it has rejected to stay the operation of the order dated 16.02.2024 passed by the trial court has failed to consider the Statutory Provisions as enshrined under

Section 148(1) and 148(2) of the Negotiable Instrument Act, 1881 as discussed above, which resulted in miscarriage of justice.

20. It is further observed here that the impugned order dated 29.02.2024 passed by the Appellate Court, by which it was provided that in case of failure of deposition of fine by the appellant/petitioner, the Bail Order shall stand automatically cancelled appears to be punitive in nature and is against the settled proposition of law as it is a settled proposition of law, that if any appeal is presented by the appellant and the same is admitted by the Appellate Court, in that event, it is also obligatory for the Appellate Court to grant interim relief in the appeal during the pendency of the appeal, thus, any order challenged in the appeal and the said appeal was admitted and pending, thus, one cannot permit a swinging pendulum to continue swinging during the pendency of the appeal.

21. The issue involved in this petition has broadly been dealt by Hon'ble the Supreme Court of India in the case of ***Surinder Singh Deswal Alias Colonel S.S. Deswal and Others vs. Virender Gandhi*** reported in (2019) SCC 341 wherein the Apex Court has been pleased to observe in paragraph No.8, which is reproduced hereinunder:-

"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."

22. Further, the Hon'ble Supreme Court in the case of ***Jamboo Bhandari vs. Madhya Pradesh State Industrial Development Corporation Limited and Others*** reported in ***(2023) 10 SCC 446*** has been pleased to observe in paragraph No.12, which is reproduced hereinunder:-

"12. In these circumstances, we set aside the impugned orders of the High Court and restore the revision petitions filed by the appellants before the

High Court. We direct the parties to appear before the roster Bench of the High Court on 9-10-2023 in the morning to enable the High Court to fix a date for hearing of the revision petitions. As the contesting parties are before the Court, it will not be necessary for the High Court to issue a notice of the date fixed for hearing. The High Court, after hearing the parties, will consider whether 20% of the amount is already deposited or not. If the Court comes to the conclusion that 20% of the amount is not deposited, the Court will re-examine the revision petitions in the light of what we have observed in this judgment. Till the disposal of the restored revision petitions, the interim order passed by this Court ordering suspension of sentence will continue to operate."

23. Thus, in view of the law laid down by the Hon'ble Supreme Court and the facts and circumstances, as narrated above and from the perusal of the record, the impugned order dated 29.02.2024 passed by Sessions Judge Faizabad (now Ayodhya) in Criminal Appeal No.12 of 2024; Mangla Prasad Singh vs. Shanti Roller Mills Ltd to the extent by which the learned Appellate Court despite admitting the appeal has declined to stay the operation of the impugned order therein dated 16.02.2024 passed by the trial court and thereby has rejected the stay application (Paper No.5-B), is against the spirit and directions issued by the Hon'ble Supreme Court of India.

24. Keeping in view the discussions made above and the laws settled by Hon'ble the Supreme Court of India referred above, this Court finds that the Appellate Court has erred in law while rejecting the stay application of the appellant/petitioner, by which it was prayed by the appellant/petitioner to stay the fine of Rs.4,00,000/- imposed by the trial court while convicting him under Section 138 of the Negotiable Instruments Act, 1881 till the disposal of the appeal preferred by the appellant/petitioner before the Appellate Court. Thus, this Court deems it appropriate to dispose of this petition with modification of the impugned order dated 29.02.2024 to the extent that the petitioner is directed to deposit 20% of the fine imposed upon him by the trial court within sixty days' from the date of delivery of this judgment by this Court and the bail already granted by the Appellate Court shall continue till the disposal of the appeal pending before the Appellate Court i.e. Sessions

Judge Faizabad (now Ayodhya) bearing Criminal Appeal No.12 of 2024 ((Mangla Prasad Singh Vs. Shanti Roller Mills Ltd.).

25. It is further directed that the petitioner will be on bail as granted by the Appellate Court vide order dated 29.02.2024 with same terms and conditions as imposed by the Appellate Court while granting him bail.

26. It is hereby made clear that if 20% of the fine imposed is not deposited by the petitioner within the period of sixty days from the date of pronouncement of this judgment by this Court, then the bail already granted by the Appellate Court concerned shall stand automatically cancelled.

27. With the above observations/directions, the present petition is finally *disposed of*.

28. Let a copy of this judgment be communicated to the Appellate Court concerned for its immediate compliance, forthwith by the office of the Senior Registrar of this Court.

(Shamim Ahmed, J.)

Order Date :- 02.04.2024
Piyush/-