* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 2nd March, 2022**
Pronounced on: 13th May, 2022

\+ CRL.M.C. 702/2022 & CRL.M.A.2998/2022

HARSH SEHGAL ..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate with Mr. Vikas Arora and Ms. Radhika Arora, Mr. Siddharth Singh and Mr. Piyush Kumar, Advocates

versus

STATE & ANR ..... Respondent

Through: Mr. Panna Lal Sharma, APP for State.
Mr. Kanwal Chaudhary, Mr. Akhil Gupta and Mr. Dinesh Kumar, Advocates for R-2.

\+ CRL.M.C. 703/2022 & CRL.M.A. 3000/2022

M/S TAKSHILA RETAIL PVT LTD & ANR ..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate with Mr. Vikas Arora and Ms. Radhika Arora, Mr. Siddharth Singh and Mr. Piyush Kumar, Advocates

versus

STATE & ANR ..... Respondent

Through: Mr. Panna Lal Sharma, APP for State.
Mr. Kanwal Chaudhary, Mr. Akhil Gupta and Mr. Dinesh Kumar, Advocates for R-2.

\+ CRL.M.C. 704/2022 & CRL.M.A.3002/2022

M/S TAKSHILA RETAIL PVT LTD & ANR ..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate with Mr. Vikas Arora and Ms. Radhika Arora, Mr. Siddharth Singh and Mr. Piyush Kumar, Advocates

versus

STATE & ANR ..... Respondent

Through: Mr. Panna Lal Sharma, APP for State.
Mr. Kanwal Chaudhary, Mr. Akhil Gupta and Mr. Dinesh Kumar, Advocates for R-2.

\+ CRL.M.C. 731/2022 & CRL.M.A.3074/2022

HARSH SEHGAL ..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate with Mr. Vikas Arora and Ms. Radhika Arora, Mr. Siddharth Singh and Mr. Piyush Kumar, Advocates

versus

STATE & ANR ..... Respondent

Through: Mr. Panna Lal Sharma, APP for State.
Mr. Kanwal Chaudhary, Mr. Akhil Gupta and Mr. Dinesh Kumar, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant batch of petitions has been filed on behalf of the petitioners under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C."), seeking setting aside of order dated 5th February, 2022 passed by learned Additional Sessions Judge, Saket Courts, Delhi (hereinafter "ASJ").

BRIEF BACKGROUND

2. As per the contents of the complaint, the brief facts of the case leading to the instant matter are that the complainant/respondent no. 2, Galaxy Datamatics Pvt. Ltd., averred that the accused no. 1, M/S Takshila Retail Pvt. Ltd., earlier known as M/s Blues Clothing Pvt. Ltd., accused no. 2, Dinesh Sehgal and accused no. 3, Harsh Sehgal, approached the respondent no.2 for a short-term loan of Rs. 5 Crores for meeting short fall in cash flow and for immediate project requirements for implementation of various contracts.

3. A short-term loan agreement dated 9th June, 2011 was entered into by the parties and respondent no. 2 advanced the loan of Rs. 5 Crores to the accused for a period of three months at interest of 24% per annum. It was stated that the parties also agreed for execution of an irrevocable and unconditional personal guarantee of the accused no. 2 and 3, jointly and severally. It was further agreed that the accused were to pay a penal interest of 3% per month in case of default of repayment.

4. For repayment of the said loan the accused issued a cheque for the amount of Rs. 5 Crores bearing no. 017257 dated 10th September, 2011 drawn on Union Bank of India and when presented the cheque was returned dishonoured with the remarks "Insufficient Funds" vide memo dated 29th December, 2011. Statutory Notice dated 2nd January, 2012 was sent by respondent no. 2 to the accused and a complaint case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter "NI Act") was filed by respondent no. 2 against the accused thereafter.

5. Vide order dated 29th March 2012, the accused were summoned by the learned Metropolitan Magistrate and the accused claimed trial pleading not guilty. The Metropolitan Magistrate, after apprising itself of the facts and material on record, passed the judgment dated 27th February, 2018 and order on sentence dated 8th March, 2018, sentencing the accused no. 2 and accused no. 3, petitioners herein, to undergo simple imprisonment for one year alongwith fine of Rs. 7.5 Crores to be paid jointly and severally by all the convict persons including the accused no.1, Company, petitioner herein, as compensation to the complainant and in default of which simple imprisonment for three months. The accused also filed an application under Section 389 of the Cr.P.C. for suspension of sentence for the purpose of filing an appeal against the conviction order.

6. The accused, thereafter, approached the Court of learned Additional Sessions Judge against the judgment and order on sentence. The learned ASJ while entertaining the appeal in C.A. 178/2018, C.A. 177/2018, C.A. 176/2018 and C.A. 180/2018, passed the order dated 5th April, 2018, suspending the order of sentence passed by the learned Trial

Court for the period of pendency of the appeal. During the pendency of the appeal, an application was filed by respondent no. 2 under Section 148 of the NI Act, which was strongly opposed on behalf of the accused for not being maintainable. Vide order dated 5th February, 2022, the learned ASJ directed the accused to deposit 20% of the fine/compensation amount to be deposited in the form of FDR in the favour of the complainant failing which the condition of suspension of sentence dated 5th April, 2018 would stand vacated.

7. The petitioners, accused M/s Takshila Retail Pvt. Ltd., Dinesh Sehgal and Harsh Sehgal, are now assailing the order dated 5th February, 2022 passed by the learned ASJ.

SUBMISSIONS ON BEHALF OF THE PARTIES

8. Mr. Vikas Pahwa, learned senior counsel appearing on behalf of the petitioners submitted that the impugned order dated 5th February, 2022 is contrary to law, illegal and liable to be set aside. It is submitted that the newly added Sections 148 and 143A of the NI Act came into force on 1st September, 2018, whereas the appeal had been filed on 4th April, 2018, that is, before the said amendment, hence, the matter did not fall in the ambit of the same and the application under Section 148 of the NI Act in itself was not maintainable.

9. It is strongly submitted that Section 148 of the NI Act was never intended to be made applicable to all pending appeals but only for the appeals which were filed after the amendment came into force. The judgment of Hon'ble Supreme Court in ***Surender Singh Deswal @ Col S.S. Deswal & Ors vs. Virender Gandhi & Anr***, **(2019) 11 SCC 341,** makes it abundantly clear that Section 148 is to apply to all appeals filed

after 1st September, 2018 even when it pertains to a complaint case filed prior to the amendment. The relevant paragraphs no. 8, 8.1 and 9 of the judgment are relied upon and are reproduced hereunder:-

> *"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 Cr.P.C. 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 Cr.P.C., 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.*
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> *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 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. 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 Sec 138 of the N.I. Act.

10. Learned senior counsel for the petitioners further relied upon ***Abu Faizal vs. State of Kerala & Anr*, 2019 SCC OnLine Ker 3980,** wherein the following observations were made by the Kerala High Court:-

"11. To see that the object and reasons behind enactment of Section 138 N.I Act, not being frustrated the Parliament has thought it fit to incorporate Section 148 into the N.I Act empowering

the appellate court to issue direction to the accused to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court vide the judgment convicting and sentencing him.

12. Accordingly, the Apex court has discarded the argument of the learned counsel on behalf of the appellant in Surinder's case (supra) that the amendment has taken away or effected the vested right of appeal of the accused and therefore the amendment shall not be made applicable retrospectively and more particularly with reference to cases/complaints filed prior to 01.09.2018 and held that with the amendment incorporating Section 148 into N.I Act, no substantive right of appeal has been taken away and/or effected

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15. The Apex Court in Surinder's case (supra) had held that the power under Section 148 N.I. Act to issue direction to the accused to deposit a sum, which shall not be less than 20% of the fine or compensation can be invoked by the appellate court either on an application filed by the accused under Section 389 Cr.P.C seeking to suspend the sentence or on an application filed by the complainant seeking deposit.

16. The power under Section 148 is meant to be invoked by the appellate court while entertaining an appeal from a judgment of conviction imposing sentence on the accused. That is why, it was held as applicable to complaints filed to launch the prosecution under Section 142 N.I. Act and pending before the courts, prior to 01.09.2018.

17. That does not mean that the provision is meant to be invoked in all Crl. Appeals pending before the

appellate court which are at the fag end of trial or pronouncement of judgment, why because, with the pronouncement of the judgment there is possibility for the accused being acquitted also. Therefore, no purpose will be served by directing the accused to deposit any sum, at that stage in view of the provision incorporated under Proviso to sub-Section (3) of Section 148 N.I Act directing to refund the amount in deposit within 60 days or 90 days as the case may be, after the judgment turns against the complainant.

18. As the objects and reasons behind the Amendment Act reveal, the deposit was insisted to restrict filing of non-meritorious appeals by unscrupulous complainants and getting orders imposing sentence, suspended leisurely. The Parliament in its wisdom intended to limit the filing of appeals from judgments, where any valid grounds to sustain appeals do not exist. Or in other words, the Parliament's intention while incorporating Section 148 in the N.I. Act was to prevent the prosecution under Section 142 N.I. Act from being dragged unnecessarily. Parliament thought it fit to put a restriction on the filing of frivolous appeals and therefore made provision for deposit of a portion, not less than 20% of the fine or compensation imposed by the trial court. This aspect is made clear in the provisions incorporated for refund of the amount, on the judgment turns in favour of the accused and ends in acquittal.

19. Therefore, the power is meant to be invoked at a point of time when appeal is preferred or to say more specifically, prior to passing of an order suspending the execution of sentence in an application preferred under Section 389(1) Cr.P.C in the Appeal. The application preferred by either party to the appeal

beyond that time shall not be entertained by the appellate court in view of sub-sections (2) and (3) and proviso thereunder, which stipulate time for making deposits, provision for release of the amount deposited to the complainant and for refund of the amount to the appellant/accused on himself being acquitted.

22. ... At the time of passing Annexure A1 order to suspend the execution of the sentence, the court has directed the accused to deposit Rs. 75,000/-, a portion of the compensation awarded by the lower court by the impugned judgment. The said direction was also complied with by depositing Rs. 75,000/- before the trial court. Accordingly, the execution of the sentence under challenge in Crl.A.156/2016 was suspended. The order suspending the execution of the sentence was passed immediately after preferring Criminal Appeal challenging the judgment of the trial court. Rs. 75,000/- of the compensation amount is now under deposit from the side of the appellant. The appeal in question is found originated from a complaint filed in the year 2015. The appeal is filed two years prior to incorporation of Section 148 into the N.I. Act. Since the appeal was admitted and an order suspending the execution of the sentence was passed after 2 years of incorporation of Section 148 into the N.I. Act and Rs. 75,000/- as directed by the Court was deposited as a condition precedent for suspending execution of sentence in the appeal, the trial court is highly unjustified in re-opening the prosecution which was almost concluded and posted for judgment for the purpose of consideration of Crl.M.P No. 721/2019 and to pass the impugned order. Annexure A2 order, undoubtedly is an erroneous one as it was passed in total disregard of the object and reasons of the Parliament while incorporating Section 148 into the Act. The Apex

Court has held that Section 148 has application in complaints filed to launch prosecution under Section 142 N.I Act prior to 01.09.2018, which are pending consideration of courts. The Appellate court in the case on hand misread the direction as if it has application to all appeals pending on the files of the appellate court. To appeals already admitted and pending consideration prior to 01.09.2018, the provision does not have application or in other words Section 148 can have retrospective operation only to pending prosecutions under Section 142 N.I Act (complaints). As far as appeals are concerned, Section 148 can have only prospective application i.e. invocation of Section 148 N.I Act is confined only to appeals filed after 01.09.2018. For the foregoing reasons, the order under challenge is liable to be set aside."

11. Relying upon the above stated judgments, it is strongly submitted that the amended provisions are not retrospective for appeals filed prior to the amendment. It is submitted that even if the amendment is considered to be retrospective, the retrospectivity is limited to the extent that the complaint case in question had been filed before the amendment but the appeal against such an order/judgment passed in the complaint case is filed after the amendment. It is submitted that if the application of Section 148 of the NI Act was to be made retrospective to the extent of including pending appeals filed before the amendment, it will create a havoc, and the pendency of the appeals will be negatively affected with complainants in appeals under Section 138 of the NI Act approaching the Court invoking the provision and hence, the purpose of the amendment of speedy disposal will be defeated.

12. Learned senior counsel for the petitioners, relying upon the judgment of Hon'ble Supreme Court in ***G.J. Raja vs. Tejraj Sharma,*** **(2019) 19 SCC 469**, submitted that Section 148 only applies to the appeals filed after 1st September, 2018. Similar interpretation is to be applicable to Section 148 as has been given to Section 143A of the NI Act in so far as it is prospective in nature and shall not apply to pending appeals but to fresh appeals filed after the amendment although they may pertain to complaint case filed prior to the amendment. The Hon'ble Supreme Court observed as stated under:-

> *"21. In our view, the applicability of Section 143-A 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 143-A, in order to force an accused to pay such interim compensation.*
>
> *22. We must, however, advert to a decision of this Court in Surinder Singh Deswal v. Virender Gandhi [Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019) 3 SCC (Civ) 765 : (2019) 8 Scale 445] where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 1-9-2018 was held by this Court to be retrospective in operation. As against Section 143-A 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 143-A of the Act. However, as a matter of fact, no such provision akin to sub-section (5) of Section 143-A*

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 143-A of the Act. Therefore, the decision of this Court in Surinder Singh Deswal [Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019) 3 SCC (Civ) 765 : (2019) 8 Scale 445] stands on a different footing.

23. In the ultimate analysis, we hold Section 143-A to be prospective in operation and that the provisions of said Section 143-A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of said Section 143-A in the statute book. Consequently, the orders passed by the trial court as well as the High Court are required to be set aside. The money deposited by the appellant, pursuant to the interim direction passed [G.J. Raja v. Tejraj Surana, 2019 SCC OnLine SC 1064] by this Court, shall be returned to the appellant along with interest accrued thereon within two weeks from the date of this order."

13. It is submitted that there is a discretion to be exercised by the Court concerned while imposing the condition of payment of 20% of the fine/compensation which is to be exercised upon judicial appreciation of facts and circumstances of each case. Learned senior counsel for the petitioner relied upon ***Ajay Vinod Chandra Shah vs. State of Maharashtra & Anr*, 2019 SCC OnLine Bom 436,** wherein the Bombay High Court observed as under:-

"21. Let me advert to the powers of the Appellate

Court under section 148, pending appeal against conviction. The recovery of compensation granted under section 148 can be necessarily done by following the procedure laid down and available under section 357 of the Code of Criminal Procedure and amount of fine is recoverable by following procedure under section 421 of the Code. The Section is worded as 'Appellate Court 'may' order'. Thus, it gives discretion to the Appellate Court to invoke its discretionary power under section 148 while directing to deposit 20% of the amount of fine or compensation. In this clause, both the words 'may' and 'shall' are present. The words in section 148 - the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. Hence, by literal meaning of this sentence; discretion is given to the Appellate Court to direct the appellant to deposit the sum but if at all such direction is given, that sum should not be less than 20% of the amount of fine or compensation awarded by the trial Court. Thus, the court has discretion and it may not pass the order but if the order is passed, then, the minimum amount payable should be 20% of the fine or compensation.

22. The grievance is made by Mr. Jha that if the accused has no capacity to pay the amount under section 148 pending appeal, then, the accused should not be deprived of his right to appeal or his right to be on bail. It is true and correct that if the accused is on bail throughout the trial and when the offence is bailable, the statutory appeal is provided and if the offence is bailable, then his right to be on bail and enjoy his liberty throughout the appeal period should not be taken away unless some special ground is made out. It is a fundamental right protected under Article 21 of the Constitution of India. However, the submissions of Mr. Jha that the section is ultra

vires is not sustainable in these Criminal Writ Petitions.

23. The criminal Courts have powers to impose various conditions at the time of granting bail, in the trial and also at the appellate stage. In appeal, the accused is not innocent but he is held guilty by the first Court. Thus, though his liberty is to be protected, simultaneously, the Court's powers to do justice to the complainant at the same time cannot be shadowed. The Appellate Court hence to strike balance of these two circumstances by adopting a reasonable view. The provision of section 148 is in consonance with the power vested with the Appellate Court which can impose some conditions at the time of granting bail or at the time of admission of appeal. However, the right to appeal and his liberty cannot be taken away but to be protected by applying the principle of reasonability while imposing conditions. I rely on the ratio laid down in the case of Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. (supra).

25. Thus, the condition imposed at the time of pending appeal of the payment of the amount of compensation should not curtail the liberty of the appellant/accused. Such condition if not fulfilled, then, amount is recoverable finally, if the conviction is maintained. The amount can be recoverable with interest. If conviction is confirmed, the order of a higher rate of interest or commercial rate of interest, may be passed; or in default maximum sentence may be imposed. Moreover, the fine or compensation is made recoverable as per the provision of section 421 of Code of Criminal Procedure.

26. In the present case, the impugned orders are passed on 3-8-2018 by the learned Magistrate and the amendment came into force on 1-9-2018.

Obviously, in the order dated 3-8-2018, section 148 is not mentioned by the learned Additional Sessions Judge. He did not intend to pass the order under section 148 but it is to be understood that the learned Sessions Judge passed the order under Code of Criminal Procedure by using the powers of the criminal Court to impose putting condition at the time of granting bail. Such a condition of bail can be imposed or it can be modified for non-compliance of the condition in view of the nature of the offence and the circumstances.

27. Therefore, the orders dated 24-9-2018 imposing a condition that the accused to deposit 25% amount out of total compensation, are modified that the petitioner/accused is directed to deposit 20% of the total amount of the compensation. The stipulated time of 60 days to deposit the said amount is extended till 90 days as this litigation was going on. If it is not deposited within the 90 days, the accused will have to pay interest at the rate of 18% from the date of this order, if the conviction is maintained finally."

14. It is further submitted that there is no definite consequence prescribed under Section 148 of the NI Act in case the appellant fails to deposit of the requisite percentage of the fine and hence, the cancellation of an already granted bail and suspended sentence could not have been the consequence accruing to non-payment of the fine/compensation amount. In ***Vivek Sahni & Anr vs. Kotak Mahindra Bank Ltd.,*** **2019 SCC OnLine P&H 2668,** while dealing with the question whether on non-deposit of the amount as directed under Section 148 of the NI Act bail granted to the appellant is liable to be automatically/consequently

cancelled, the undermentioned observations were made by the Punjab and Haryana High Court:-

> *"25. On careful examination of Sections 143A and Section 148 of the NI Act, it is nowhere, specifically provided that if the payment as ordered has not been deposited, the bail granted shall be liable to be consequently cancelled. Section 143 do provide that recovery can be made of such defaulted amount as if it is a fine under Section 421 Cr.P.C, therefore, obviously during the trial of the case, the Court should not cancel the bail already granted on this ground alone. The offence under Section 138 of the NI Act is bailable. Still further, although, there is no provision in Section 148 of the NI Act for recovery of defaulted amount against appellant, however, the words used are "fine or compensation" awarded by the trial Court. Default in payment of certain percentage of compensation or fine, would not ipso facto result in cancellation of the bail. There are long series of judgments passed by the Hon'ble Supreme Court that normally conditions for grant of bail cannot be made onerous for the accused. Once the legislature or framers of the NI Act have not made any specific provision for automatic cancellation of the bail granted by the trial court or the appellate court on account of default of payment of interim compensation or certain percentage of compensation or fine, it would not be appropriate to hold it otherwise.*
>
> *26. Accordingly, Q. No. 2 is also answered in favour of the petitioners."*

15. It is stated that the substantive sentence was suspended in the year 2018 and the order of cancellation/vacation of the suspension order in case of non-deposit has been made in 2022, after about four years, which

in itself against the principles as established by law. There was no condition to the suspension of sentence when the order dated 5th April, 2018 was passed and a condition is being imposed at this stage by the Appellate Court, which puts the liberty of the petitioners at stake.

16. It is further submitted that even if the petitioners are directed to pay the fine/compensation amount, the period warranted under the provision is 60 days which may be extended for a period of 30 days, however, the Appellate Court granted a time period of one month for the payment of the fine/compensation while allowing the application under Section 148 of the NI Act, which shows the non-application of judicial mind, thereby making the order bad in law and illegal. Moreover, since the order on sentence and the substantive sentence passed against the petitioners were suspended for the period of pendency of the appeal, vacating the order by the learned ASJ would amount to review of its own order, which is not permissible under law.

17. Learned senior counsel for the petitioners submitted that the impugned order passed by the learned ASJ suffers from severe illegalities, is perverse, against the settled principles of law and hence, liable to be set aside.

18. *Per Contra,* Mr. Kanwal Chaudhary, learned counsel for the respondent no. 2 vehemently opposed the position presented on behalf of the petitioner. It is submitted that the application filed under Section 148 of the NI Act was maintainable and in accordance of law laid down under the Act as well as with the interpretation given by the Hon'ble Supreme Court in various cases.

19. It is submitted that there is no doubt to the fact that the amendment that came into force on 1st September, 2018, thereby, introducing Section 148 to the NI Act, is retrospective in nature. The position is clear in light of the judgments of ***Surender Singh Deswal*** **(2019),** ***Surender Singh Deswal @ Col S.S. Deswal & Ors vs. Virender Gandhi,*** **(2020) 2 SCC 514,** as well as ***G.J. Raja (Supra).*** Hon'ble Supreme Court has made it clear that relief under Section 148 of the NI Act would be available to the complainant even in cases where the complaint case has been filed prior to the amendment. The interpretation of the Hon'ble Supreme Court, to the effect that Section 148 of the NI Act is applicable even for the complaints filed before the amendment, suggests that the appellant before the Court in an appeal arising out of a complaint filed before the amendment could be subjected to implications of Section 148 of the NI Act. Meaning thereby, that Section 148 will be applicable to an appeal arising out of complaint prior to the amendment, irrespective of being filed before or after the amendment.

20. It is submitted that there is no bar on limitation or with respect to the stage at which Section 148 may be invoked. Section 148 of the NI Act is to be given purposive interpretation to include complaint cases and appeals filed before the amendment in its purview in order to give force to the objectives as stated in the Statement of Objects and Reasons of the amendment. The purpose of introducing Section 148 of the NI Act is to avoid frivolous and ingenuine appeals and the same has to be given effect by extending the application of the provision to appeals that arise from complaints filed before the amendment was brought about. Hence, any appeal at any point of time arising out of a complaint case filed before the

Court concerned could be subjected to an application under Section 148 of the NI Act. It is submitted that in light of the observations of Hon'ble Supreme Court the application under Section 148 of the NI Act was maintainable and the learned ASJ has committed no error while allowing the same.

21. Learned counsel for the respondent no. 2 further opposed the argument of the petitioners that the learned ASJ did not have the powers to modify its order dated 5th April, 2018 while passing the order dated 5th February, 2022, wherein it directed appellant/petitioners to deposit 20% of the fine/compensation amount to the complainant in default of which the suspension of sentence would stand vacated. It is submitted that the learned ASJ was well within its powers to the pass the order dated 5th February, 2022 and vacating the suspension of sentence did not amount to a review. The condition put to the petitioners for submission of the fine amount was reasonable, appropriate and in consonance of the object and purpose of the amendment.

22. Hence, the impugned order is absolutely legal, proper and in accordance with law and there is no substantial ground to allow the instant petition.

ANAYSIS AND FINDINGS

23. Heard learned counsel of the parties at length and perused the record, including the impugned order.

24. Before delving into the discussion of the issue at hand the provision of the NI Act, as brought into force by the amendment of 2018 on 1st September, 2018, is required to be perused. The provision forms the

basis of the arguments advanced by the counsel for the parties. Section 148 of the Act is reproduced as under:-

> *"148. (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 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."*

25. The issues and questions of law before this Court are two-fold. These questions would judge the legality or illegality of the order passed

by the learned ASJ and whether the implications it has are affirmative or negative.

26. The first question posed is whether the amendment of 2018, introducing Section 148 of the NI Act, is retrospective in nature or not. The language of the provision is silent on the point that at which stage the application under Section 148 of the NI Act can be filed in an appeal against conviction under Section 138 of the NI Act, whether it may be filed at the first instance at the stage of initiation of the proceedings or at any stage during the pendency of appeal, and whether the provision is applicable to the appeals filed prior to the amendment. Since the provision itself does not make any suggestion to question of extent applicability of the provision, it is pertinent to refer to the judgment of Hon'ble Supreme Court in ***Surender Singh Deswal*** **(2019).** The Hon'ble Supreme Court made the following observations with respect to the nature and extent of retrospectivity attached with the provision:-

> *"7.1. 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 NI Act was being frustrated. Parliament has thought it fit to amend Section 148 of the NI Act, by which the first appellate court, in an appeal challenging the order of conviction under Section 138 of the NI Act, is conferred with the power to direct the convicted appellant-accused 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 NI Act, it cannot be said that any vested right of appeal of the appellant-accused has been taken away and/or affected. Therefore,*

submission on behalf of the appellants that amendment in Section 148 of the NI 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 NI Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in Garikapati Veeraya and Videocon International Ltd., 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 NI Act stated hereinabove, on purposive interpretation of Section 148 of the NI Act as amended, we are of the opinion that Section 148 of the NI 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 NI Act, even in a case where the criminal complaints for the offence under Section 138 of the NI Act were filed prior to Amendment Act 20 of 2018 i.e. prior to 1-9-2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the NI 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 One/compensation as imposed by the learned trial court considering Section 148 of the NI Act, as amended."

27. Further, in ***Surender Singh Deswal*** **(2020)** Hon'ble Supreme Court, referring to the abovementioned judgment, held as under: -

"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 and others vs. Virender Gandhi) (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."

28. In ***G.J. Raja (Supra),*** the Hon'ble Supreme Court, while referring to ***Surinder Singh Deswal (2019)*** with respect to the question of retrospectivity of Section 148 of the NI Act, noted as under:-

"22. We must, however, advert to a decision of this Court in Surinder Singh Deswal v. Virender Gandhi [Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019) 3 SCC (Civ) 765 : (2019) 8 Scale 445] where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 1-9-2018 was held by this Court to be retrospective in operation. As against Section 143-A 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 143-A of the Act. However, as a matter of fact, no such provision akin to sub-section (5) of Section 143-A 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 143-A of the Act. Therefore, the decision of this Court in Surinder Singh Deswal [Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Cri) 461 : (2019) 3 SCC (Civ) 765 : (2019) 8 Scale 445] stands on a different footing."*

29. The opinion of the Hon'ble Supreme Court, as can be derived from the extracts reproduced above, establishes the position that Section 148 of the NI Act is retrospective in nature. The words "*even in a case where the criminal complaints for the offence under Section 138 of the NI Act were filed prior to Amendment Act"* used by Hon'ble Supreme Court clearly and definitively confirm the position that in cases where a complaint case under Section 138 of the NI Act has been filed by the complainant prior to the enforcement of the amendment on 1st September, 2018, where the accused is convicted and subsequently, the convict intends to file an appeal against the judgment and order of conviction, then the fact that the complaint case had been filed prior to the amendment will not create a bar on the applicability of Section 148 on the appeal filed after the amendment arising from such a complaint case. Remedy/relief under Section 148 will be available to the complainant against the

convict/appellant for such cases, that is, where the complaint case pertains to a time prior to the amendment and introduction of Section 148 of the NI Act, even though the appeal pertains to a time post the amendment.

30. The question before this Court, however, stands on a different footing. In the instant case, the complaint case as well as the appeal had been filed before the amendment. Moreover, the suspension of substantive sentence was also granted to the accused/petitioners prior to the amendment. From filing of the complaint case to filing of appeal and suspension of sentence, all proceedings pertain to a time when Section 148 of the NI Act was not even in existence. The analysis of the abovementioned judgments of Hon'ble Supreme Court is silent with respect to question that is before this Court since the facts of the said cases are different to the instant matter. The observations of the Hon'ble Supreme Court do not indicate the position of law with regard to the applicability of Section 148 of the NI Act on cases such as the instant matter and therefore, an observation is to be made, keeping in view the opinion of the Hon'ble Supreme Court.

31. For deciding this question, it is deemed necessary to look into the purpose and intent of the legislature while passing the amendment, whereby, Section 143A and 148 were added to the NI Act. The Statement of Objects and Reasons for the amendment of NI Act is reproduced as under:-

> *"The Negotiable Instruments Act, 1881 (the Act) was 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 realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.

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."

32. The intention of the legislature is evident from a bare reading of the Statement. The purpose underlaid in the amendment of the Act is facilitation of speedy and effective disposal of matters initiated under the NI Act, specifically under Section 138. The second purpose is that the right to appeal is not misused at the expense of the complainant only to delay meeting the ends of justice. It has been observed that the convicts often obtain stay of order of sentence in the garb of filing an appeal and the proceedings in the appeal are kept pending for years and decades with no consequence and no relief for the complainant in any manner. The

objective is to provide some measure of relief to the complainant in the event of stay of proceedings or any such other event. The third objective of the amendment is, hence, that the complainant is awarded some relief while the sentence of the appellant is stayed. The aim of the legislature was also to avoid frivolous litigations and to save time, money and other resources of the Courts as well as the parties.

33. Keeping in view the objective of the amendment, it is proper to say that to avoid frivolous, unnecessary and unscrupulous litigations and proceedings, the Court concerned may take the required steps to ensure that the appellant has approached the Court with a genuine and real case against the order of conviction and is not wasting the time and resources of the judicial machinery only to delay his conviction and punishment thereof. Such a check on filing of appeals cannot be said to be limited to the cases arising only after the amendment. If it is the intention of the legislature to provide for an effective measure to deal with the menace of unnecessary litigations, then such measure may be intended to be applied to cases where the proceedings under appeal are still underway and have been pending for years. In fact, the need to filter out the cases of genuine or frivolous appeals is all the more substantial in cases that have been pending for a long time and wherein no progress is being made for such prolonged periods of time due to the pendency of the appeal proceedings. The Hon'ble Supreme Court has held the provision in question, that is, Section 148 of the NI Act, to be retrospective in nature and having applicability over complaints that have been filed prior to the amendment. This reflects the intention of the Hon'ble Apex Court to not extinguish the relief as intended to be granted to the complainant under Section 148.

The interpretation may be construed to mean that any appeal which is emanating from a complaint filed prior to the amendment will fall within the ambit of the nature of cases as described by the Hon'ble Supreme Court and Section 148 would apply to such cases. The idea is also to give purposive interpretation to Section 148 to extend applicability to cases which were filed when the remedy was not available to the complainant under Section 148 of the NI Act. The extensive interpretation would only serve the objective intended by the legislature.

34. It is a settled principle of law that an amendment that does not take away a substantive right is purported to be retrospective in nature and if it does, the applicability of the said amendment would be prospective. Moreover, the principle on retrospectivity has also been discussed by the Hon'ble Supreme Court in ***G.J. Raja (Supra)*** while referring to ***Hitendra Vishnu Thakur vs. State of Maharashtra,*** **(1994) 4 SCC 602**, as has been reproduced as under:

> *"15….. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an amending Act and its retrospective operation may be culled out as follows:*
>
> *(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.*

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

35. In case of Section 148 of the NI Act, there is no substantive right that is being taken away by the enforcement of the amendment. The Hon'ble Supreme Court in ***Surinder Singh Deswal*** **(2019)** has also rejected the argument that the amendment takes away the vested right of the convict to appeal. The only implication of the amendment is that some part of the amount of fine/compensation, which is accruing towards the complainant, is directed to be paid against the convict/appellant and in favour of the complainant. This is also done bearing in mind that appellant has been convicted under Section 138 of the NI Act and his guilt under the offence has already been established after thorough procedure and appreciation of evidence. In light of these facts, if a nominal fine is imposed upon the appellant, it cannot be seen to be an

unfair and unreasonable penalization or taking away of substantive right of the convict/appellant. Therefore, the argument that Section 148 is not retrospective is rejected. The order passed by the learned ASJ could not have been said to be in excess of power, to the extent of imposition of the fine of 20% of the amount.

36. The second question before this Court is that whether the condition as imposed by the learned ASJ, that the suspension of sentence will be vacated in case the fine amount is not deposited within the stipulated period, amounted to modification or review of order and hence, impermissible by law. The bar on modification of an order/judgment finds its existence under the Cr.P.C. The provision is stated as under:-

> *"362. Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."*

The provision makes it clear that the bar on alteration of judgment or order is on the judgment or final order and not just any order passed during the pendency of the proceedings, including any interlocutory order. The words used in the provision are *"while disposing of a case"* and the bar is hence, only for final orders and judgments that finally decide the fate of the case and dispose it off. The learned ASJ was not passing a final order or judgment when it suspended the sentence of the accused and hence, a bar under Section 362 of the Cr.P.C. did not exist against the order. However, what is now to be considered is whether by principle the order passed by the learned ASJ could be classified as a

review of an order.

37. A modification of an order is limited to the correction of an error apparent on record, a clerical or an arithmetic mistake etc. On the other hand, an order is said to be reviewed when the Court concerned while passing it goes into the merits of the case and re-examines the order passed in light of the facts and circumstances of the case. The learned ASJ, while passing the impugned order, re-appreciated the facts of the matter before it, for the purpose of adjudicating the application under Section 148, and then passed the order of imposition of the fine with the condition of cancellation of the suspension of sentence on non-payment. To this extent, it may be said that that the learned ASJ reviewed its original order dated 5th April, 2022 and imposed a condition in retrospective. The learned ASJ could not have exercised the powers granted to it as an Appellate Court to review its own order of suspension of sentence. The learned ASJ while passing the order, to an extent, imposed a condition to the suspension of sentence, which was granted prior in time, that is, 4 years back.

38. The general practice under Section 148 of the NI Act is that the Court concerned while passing the order considering suspension of sentence, imposes the condition of payment of atleast 20% of the fine/compensation amount and if the accused/convict fails to abide by or comply with any condition, as imposed upon him while grating bail and/or suspension of order, the concerned Court may make a finding to the effect of cancelling the bail of the convict/appellant. Nevertheless, the bail or suspension of sentence does not stand automatically cancelled in cases where a fine or compensation has been levied on the appellant

under Section 148 of the NI Act and is not deposited by him as per the directions of the Court concerned. In ***Vivek Sahni (Supra)***, the Punjab & Haryana High Court also shared the view that when the fine is levied under Section 148 of the NI Act and the appellant fails to pay it within the given period, a bail granted under Section 138 of the NI Act, which itself is a bailable offence, would not *ipso facto* be cancelled upon non-payment. However, such is not the case in the instant petition. Here, the sentence of the petitioners was already suspended with other conditions in place and the learned ASJ upon appreciating the changes brought about by the amendment of 2018 in the NI Act imposed the condition of vacation of order of suspension.

39. It is true that Section 148 of the NI Act does not provide for any sanction or punishment for non-payment of the fine/compensation amount, however, the same is to be decided by the Court concerned in accordance with the facts and circumstances of each case, the sentence in question, the material on record, the likelihood of the appellant to evade the process of justice and such other factors. It is found that the learned ASJ did not have the power to touch upon the basic relief granted to the appellant by suspension of sentence and overturn it completely vide the impugned order at that stage, that is, when the suspension of sentence was already in operation and was passed four years prior to the impugned order.

40. The operative part of the impugned order is reproduced herein to closely evaluate the legalities and illegalities, in light of the discussion in the foregoing paragraphs:-

"16 Considering the entire facts and circumstances

> *of the case in hand and the law laid down by the Hon'ble Apex Court in Surinder Singh Dewal's case (supra), the application u/s 148 NI Act is maintainable and the same is accordingly allowed. The appellant is directed to deposit 20% of the fine/compensation amount as imposed by the Ld. Trial Court, in the form of FDR in favour of complainant, before the Ld. Trial Court, within a period of one month from the date of this order, failing which the condition of suspension of sentence dated 5.4.2018 shall stand vacated.*
>
> *17 With these observations, the application u/s 148 NI Act filed on behalf of respondent no. 1 stands disposed of."*

41. The learned ASJ although did have the power to impose fine in accordance with Section 148 of the NI Act for an appeal arising out of a complaint case filed before the amendment, however, he did not have the power to go beyond the mandate of the provision. While passing the impugned order the learned ASJ granted one months' time to the petitioners for deposition of 20% of the amount imposed by the learned Trial Court, however, Section 148 affords a period of sixty days to the appellant to deposit the fine/compensation levied upon him by the Appellate Court. Reference is made to the decision of High Court of Kerala where the same question was entertained in ***Sreekandan Nair vs. State of Kerala,*** **2020 SCC OnLine Ker 776,** and it observed as under:-

> *"13. As per Annexure-II order, the appellate court granted only a period of fifteen days to the petitioner to deposit 20% of the amount of compensation. An appellant, who is ordered to deposit amount under Section 148(1) of the Act, is entitled to get a period of sixty days from the date of*

such order, to deposit the amount. The statute specifically grants a period of sixty days to an accused/appellant to comply with an order passed under Section 148(1) of the Act. Then, any direction given by an appellate court that the amount shall be deposited by the accused/appellant within a period, which is lesser than sixty days from the date of such order, would be illegal. The appellate court has no power to reduce or curtail the period provided in the statute to comply with an order for deposit of amount. The appellate court has got no discretion in the matter. It is mandatory for the appellate court to grant a period of sixty days to the accused/appellant to comply with an order passed under Section 148(1) of the Act.

14. Therefore, Annexure-II order passed by the appellate court, as far as it pertains to the time granted to the accused/appellant for depositing the amount, cannot be sustained in law."

42. The learned ASJ was bound to abide by the provision and the terms it provides. When the provision itself stipulates a period of sixty days within which fine imposed may be paid then imposing a period of one month was illegal and unsustainable in law. The learned ASJ passed the order in contradiction to the provision when it granted only a month's time to deposit the payment of 20% of the fine/compensation amount, when Section 148 itself makes provision for a payment within sixty days which may be extended for thirty days but not thereafter. Hence, the impugned order was contrary to law and illegal since the learned ASJ did not honour the period prescribed under the provision. Learned ASJ further, reviewed his order dated 5th April, 2018 while passing the impugned order and he did not have the power to impose such a condition

on the petitioners that took away the liberty granted by the same Court, four years before the impugned order.

CONCLUSION

43. In view of the discussion above, and also since, it has been established that the applicability of Section 148 of the NI Act will be extended to appeals arising out of complaint cases that have been filed prior to the amendment, it is found that the learned ASJ was not wrong in adjudicating upon an application under section 148 of the NI Act, at the given stage, and imposing the cost/fine/compensation of 20% of the amount imposed by the learned Trial Court. Hence, to the point of retrospectivity, this Court is satisfied that the contentions and grounds raised on behalf of the petitioners do not stand ground in the peculiar facts and circumstances of this case.

44. However, considering the discussion as above, merits of the case and the contents of the impugned order, it is found that the order passed was impermissible by law and not in accordance with the statute, for the reason that, firstly, the period prescribed for depositing fine awarded under the provision is of sixty days which may be extended for thirty days, yet the learned ASJ only granted a period of one month to the petitioners to deposit 20% of the fine/compensation in favour of the complainant, and secondly, imposing the condition of vacation of suspension of substantive sentence amounted to a review of its own order which is unsustainable by law. Therefore, the impugned order is illegal to the extent as stated.

45. This Court deems, that in light of the sum involved in the matter, the sentence ordered against the petitioners of simple imprisonment of

one year, the fact that the suspension of sentence was granted in 2018, that Rs. 5.82 Crores has already been paid by the petitioners towards their liability, that under Section 148 of the NI Act a period of 60 days is given as a minimum time period within which the fine imposed may be deposited, however, the learned ASJ granted only a period of one month, that Section 148 does not itself provide for a consequence of non-payment of the fine imposed on the appellant, the learned ASJ while passing the impugned order and imposing the condition of vacation of suspension of sentence, in absence of extraordinary and exceptional circumstances, exceeded its powers and order passed in not permissible by law, hence, erroneous and illegal.

46. Keeping in view the facts and circumstances, the contentions and arguments made on behalf of the parties, and the law as interpreted with conjoined reading of the provisions under the NI Act, it is found that the order dated 5th February, 2022 passed by learned Additional Sessions Judge, Saket Courts, Delhi in C.A. 178/2018, C.A. 177/2018, C.A. 176/2018 and C.A. 180/2018, is contrary to law, illegal and hence, it is set aside.

47. Accordingly, the instant petition is allowed.

48. Pending application, if any, also stands disposed of.

49. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 13, 2022
Aj/Ms