115

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM No. 20603 of 2022 in/and
CRM-M No. 4244 of 2022
Date of Decision: 06.07.2022

Amit Kumar (Deceased) through
his LR's mother Smt. Sushila Devi

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Ravinder Bangar, Advocate
for the petitioners.

Mr. Tanuj Sharma, Assistant Advocate General, Haryana
for official respondent No. 1 / State.

Mr. Aakash Singla, Advocate
for respondent No. 2 (Applicant in CRM-20603-2022)

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SURESHWAR THAKUR, J. (ORAL)

CRM-20603-2022

1. With the consent of the learned counsel for the parties, the date of hearing of the main case is preponed from 08.09.2022, and, is taken up today itself.

2. The application is, accordingly, disposed of.

MAIN CASE

1. The learned Judicial Magistrate First Class, Charkhi Dadri, through a verdict drawn on 16.08.2021 (Annexure P-1), upon, complaint bearing COMA No. 174 of 2016, convicted the accused – Smt. Sunita Devi (respondent No. 2 herein), qua notice of accusation, for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short "the Act").

2. In consequence thereof, through a sentencing order drawn, on 16.08.2021, the learned trial Magistrate concerned, proceeded to impose, upon, the convict, sentence of simple imprisonment extending upto a term of one year, and, also made a direction, upon, the convict to pay an amount of Rs. 55,00,000/-, as compensation to the complainant – petitioner herein.

3. The above made verdict of conviction, and, the consequent therewith sentence of imprisonment, and, also the awarding of compensation amount to the aggrieved-complainant, became challenged by the convict, through hers instituting an appeal there-against, before the learned Additional Sessions Judge, Charkhi Dadri.

4. However, during the pendency of the apposite appeal, as, became preferred by the aggrieved-convict, the latter proceeded to also institute an application cast under Section 389 of the Cr.P.C., rather before the learned Appellate Court concerned. The learned Appellate Court concerned, through an order made thereons, on 09.09.2021 (Annexure P-3), cast the hereinafter extracted directions, upon, the appellant – convict (respondent No. 2 herein).

> *" The present criminal appeal presented, which is assigned to this Court. Since there are some arguable points involved in the present appeal, so, the same is admitted for hearing. It be checked and registered. Now notice of the same be issued to respondent for 17.11.2021 on filing of requisite materials within seven days.*
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> *Along with instant appeal, an application for suspension of sentence has been filed by the appellant. Heard. Keeping in view the reasons as mentioned in the application and facts that the decision of the appeal shall take some time, so the execution of sentence of appellants is hereby suspended till the decision of this appeal on her furnishing personal bond in the sum of*

Rs.1,00,000/- with one surety in the like amount. Requisite bail bond and surety bond furnished, which are accepted and attested. Appellant is released on bail. A copy of this order be sent to the learned Trial Court for intimation. To come up on the date fixed. "

5. A reading of the above extracted order reveals, that the learned Appellate Court concerned, did not, excepting its making an insistence, upon the appellant-convict to furnish personal and surety bonds in the sum of Rs.1,00,000/- each, hence in his proceeding to suspend the execution of the sentence of imprisonment, imposed upon, the appellant by the Convicting Court, rather did not deem it just and appropriate to, also impose upon the convict, a further condition of hers depositing a reasonable percentum of the compensation amount, as, became awarded to the complainant, through the verdict (supra), as, became initially drawn by the learned trial Magistrate concerned.

6. However, the aggrieved – complainant (petitioner herein) made an application, on 02.03.2022, rather before the learned Appellate Court concerned, application whereof became cast under Section 148 of the Act, and, the verdict as made thereons, on 30.05.2022, has been placed on record by the learned counsel, for the aggrieved – complainant, in Court today, and, is taken on record.

7. A reading of the afore order of 30.05.2022 reveals, that the learned Appellate Court concerned, proceeded to make a direction, upon, the respondent – accused to deposit 20%, i.e. Rs.11,00,000/-, out of the total compensation amount of Rs.55,00,000/-, as, became awarded to the aggrieved-complainant / petitioner herein. Moreover, the learned Appellate Court concerned, also made a direction, upon, the accused-respondent No. 2 herein to make deposit (supra) within 90 days from the making(s) of the

order (supra).

8. The learned counsel appearing for the aggrieved – complainant / petitioner has argued, before this Court, that unless compliance qua the order (supra), becomes meted by the respondent – accused, thereupon, the order, as, made by the learned Appellate Court concerned, upon, the applicant-convict's application, as, cast under Section 389 of the Cr.P.C., as, becomes embodied in Annexure P-3, and, wherethrough the learned Appellate Court concerned, proceeded to, during the pendency of the apposite appeal, suspend the execution of the substantive sentence of imprisonment, as, became imposed, upon, the convict, by the learned trial Magistrate concerned, rather becomes amenable for becoming *ipso facto* vacated or it becoming *non est*.

9. In other words, he argues that the order of 30.05.2022, as, made upon the complainant's application under Section 148 of the Act, as, made subsequent to the order of 09.09.2021 (Annexure P-3), comprises an imperative condition precedent, rather for even the order suspending the execution of the sentence of imprisonment, as, made by the learned Appellate Court concerned, upon, the respondent – accused's application, as, cast under Section 389 of the Cr.P.C., rather taking the fullest, and, binding effect.

10. For the reasons to be assigned hereinafter, the above made submission is misplaced, and, is rejected. The primary reason for drawing the afore inference becomes embodied, upon, making an analysis of the mandate carried in Section 148 of the Act, provisions whereof, become hereinafter extracted.

" 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 deposit1 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. ”*

11. Though, the above extracted provision, commences with a non-obstante clause, and, obviously over-rides any provision contained in the Cr.P.C., especially appertaining to the proceedings in the apposite appeal, as, may become cast by the aggrieved-convict before the learned Appellate Court concerned. However, irrespective of the commencement of the provisions (supra) rather with a non-obstante clause, but yet the provision

(supra), does not completely over-ride nor oust the mandate carried in Section 389 of the Cr.P.C. The above inference becomes grounded in the trite rubric, that Section 389 of the Cr.P.C, works to facilitate the protection of liberty of a convict, through his / hers, on certain relevant imposable conditions, hence seeking relief qua the execution of the substantive sentence of imprisonment imposed upon, hers / him, becoming suspended during the pendency of the apposite appeal. Contrarily, the mandate carried in Section 148 (supra), rather is merely workable, as a compensatory / interim pecuniary relief to the complainant, hence during the pendency of the apposite appeal. The reason for making the inference (supra) becomes aroused, from a keenest appraisal of mandate (supra), whereins, occurs no explicit mandate, that in the wake of the aggrieved-convict / respondent No. 2 herein failing, to mete compliance qua an order made under Section 148 of the Act, it bringing the ill-casualty of any order passed, on the convict's application cast under Section 389, of the Cr.P.C., and, wherethrough the execution of the sentence of imprisonment, became suspended, rather becoming *ipso facto* nullified, and, or, it becoming vacated. Moreover, a circumspect reading thereof, unfolds that, for ensuring execution of the order as passed under Section 148 of the Act, by the learned Appellate Court concerned, the latter rather not becoming juridictionally empowered to subject the errant respondent-accused to judicial incarceration. Conspicuously, also in Section 148 of the Act, no provision alike the one carried in Section 389 of the Cr.P.C. rather exists, and, appertaining to the protection of the personal liberty of the convict, and or, his liberty being not jeopardized, during the pendency of his appeal, before the learned Appellate

Court concerned. In the absence of Section 148 of the Act, completely ousting the workability or the clout of the Section 389 of the Cr.P.C., provision(s) whereof become specifically constituted rather for ensuring the protection of the personal liberty of the convict, during the pendency of the appeal, preferred by him before the learned Appellate Court, therefore, it can be unflinchingly concluded, that the convict upon his suffering conviction, even in respect of an offence under "the Act", can yet recourse, and, or avail the mandate carried in Section 389 of the Cr.P.C.

12. In consequence, both provisions (supra) work independently of each other, and or, in distinct fields, and or, Section 389 of the Cr.P.C., can never be deemed to become redundant, nor unworkable, as any inference against the above conclusion, would militate against the constitutional principle enshrined in Article 21 of the Constitution of India. Therefore, irrespective of the mandate carried in Section 148 of the Act, the sweep and clout of Section 389 of the Cr.P.C., can never be construed to become eclipsed.

13. If so, even if the accused-respondent, did not comply, with the order made on 30.05.2022, by the learned First Appellate Court concerned, rather upon the aggrieved-complainant's application, cast under Section 148 of the Act, it cannot leverage any conclusion, that the respondent-accused, would become amenable, for hers being put to judicial custody. Contrarily, the only recourse for ensuring its execution or its enforcement against the respondent-accused, would become comprised, in the learned Appellate Court concerned, proceeding to draw succor, from the mandate enshrined in Section(s) 421 / 431 of the Cr.P.C., provisions whereof, stand extracted

hereinafter.

> ***"421. Warrant for levy of fine.***
>
> ***(1)*** *When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-*
>
> *(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;*
>
> *(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter: Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.*
>
> ***(2)*** *The State Government may make rules regulating the manner In which warrants under clause (a) of sub- section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.*
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> ***(3)*** *Where the Court issues a warrant to the Collector under clause (b) of sub- section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law: Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.*
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> ***431. Money ordered to be paid recoverable as fine.***
>
> *Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:*
>
> *Provided that section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if*

> *in the proviso to sub-section (1) of section 421, after the words and figures" under section 357", the words and figures" or an order for payment of costs under section 359" had been inserted, E.- Suspension, remission and commutation of sentences. ”*

14. Even if the learned trial Magistrate concerned, did not impose, a sentence of fine comprised in a sum of Rs. 55,00,000/-, upon, the respondent-accused, and, rather chose to direct her to pay compensation, in the afore sum, to the aggrieved-complainant, but irrespective of the fact, that no sentence of fine equivalent to Rs. 55,00,000/- became imposed, upon, the respondent-accused, by the learned trial Magistrate concerned, but yet the mode for its recovery, is the one enshrined in Section 421 / 431 of the Cr.P.C. The reason for forming the above conclusion becomes rested, upon, the factum, that Section 431 of the Cr.P.C., makes an explicit mandate, that when any awardings of money are made by the Convicting Court, to the aggrieved-complainant, rather through the exercising(s) of jurisdiction under Section 357, of the Cr.P.C., or, under some other provision(s) engrafted thereins, and, or when no fine is imposed, upon, the convict, besides when no specific provision is made for enforcement or execution or realization(s), of compensation amount, and, as become(s) awarded to the complainant, yet the above order, as, made by the Convicting Court, under the Cr.P.C., inclusive of an order made under Section 357 of the Cr.P.C., would be deemed to be in an order qua recovery of fine, and, also it would become amenable for becoming enforced, and or, the determined amount becoming open to become realized as a validly recoverable fine from the estate of the respondent-accused.

15. Though, only upon the completest termination of the apposite complaint, the Empowered Court, can validly proceed to recourse the

mandate enshrined in Section 421 of the Cr.P.C., and or, the one carried in Section 431 of the Cr.P.C., but in respect of an order passed under Section 148 of 'the Act', especially when sub-Section (3) thereof, makes a specific / express mandate, and, also empowers the Appellate Court to, during the pendency of the appeal, direct the release of the deposited amount, as, determined thereunder(s), to the aggrieved-complainant, and, further when the last proviso there-underneath rather makes a contemplation, that in the event of a verdict of acquittal being rendered qua the aggrieved-accused, thereupon, the Empowered Court becoming vested with jurisdiction to direct the complainant to repay the compensation amount, as earlier released in his favour, after a binding order being made under sub-Section (3).

16. Therefore, given the above provisions, it is to be concluded, that in respect of an order passed under Section 148 of the Act, and, even if the complaint has not become completely terminated, yet the learned Appellate Court concerned, can enforce an unchallenged order, as, made under the provisions (supra), through, rather upon the errant respondent-accused, evidently omitting to mete compliance thereto, its proceeding to draw sustenance, and, also its recoursing the mandate encompassed in Section(s) 421 / 431 of the Cr.P.C. However, of course, in case ultimately the complaint becomes completely terminated, and, results in a verdict of acquittal being passed qua the respondent-accused, thereupon, the complainant becomes enjoined to restore qua the accused-respondent, the compensation amount, as either deposited, or, is successfully enforced or realized from his / hers estate, through adoption of the procedure contemplated under Section(s) 421 / 431 of the Cr.P.C. In other words, the

releases of amounts, as, determined under conclusive orders rather are ad interim or temporarily releases, and or, are amenable for restitution to the accused, upon, the latter receiving a verdict of acquittal.

17. In short, even if the respondent-accused, has not meted compliance qua the order made on 30.05.2022, upon, the complainant's application cast under Section 148 of the Act, yet on her omission to do so, the respondent-accused, cannot be faced with the ill-consequence qua the order, suspending the execution of the substantive sentence of imprisonment, as passed, on her application under Section 389 of the Cr.P.C., becoming, construable to become *ipso facto* annulled, or, set aside, nor can, for lack of compliance qua an order made on 30.05.2022 against the respondent-accused, the learned Appellate Court concerned, can proceed to direct the subjecting(s) or putting(s) to judicial incarceration, hence the errant respondent-accused. As above stated, the remedy for execution or realization of the amounts, determined under a conclusive order made under Section 148 of "the Act", is through adoption of the procedure contemplated under Section(s) 421 / 431 of the Cr.P.C.

18. Be that as it may, the other important question, which is also to be also determined, is whether, the learned Appellate Court concerned, erred in law or committed a legal fallacy, in its in suspending the execution of the substantive sentence of imprisonment, as, became imposed, upon, the convict, by the learned Convicting Court, given its excepting, its making a direction upon the respondent-accused to furnish personal and surety bonds in a sum of Rs.1,00,000/-, its not proceeding to, as a further imperative condition precedent, directing the respondent-accused, to also deposit a

reasonable percentum of the cheque amount, or, compensation amount, rather in its establishment. In determining the afore factum of any legal fallacy in the above regard becoming committed by the learned Appellate Court, this Court is of the firm view, that the omission (supra), is in fact a grave legal fallacy, and, is required to be undone. The reason being, that when Section 148 of the Act, as above stated, does not fetter or curtail the workability of Section 389 of the Cr.P.C., thereupon, as above stated, when the thereunder(s) vested jurisdictional empowerment in the Empowered Court rather remains intact, conspicuously for ensuring the protection of personal liberty of convict. In sequel, when the mandate carried in Section 148 of the Act, is an auxiliary provision or a provision supplemental to the provisions engrafted in Section 389 of the Cr.P.C, therefore, when the remedy for enforcement of a conclusive order made under Section 148 of the Act, may be cumbersome, as well as time consuming, whereas, in the wake a direction being made by the learned Appellate Court, upon, the latter's application under Section 389 of the Cr.P.C., inasmuch as qua his / hers, depositing a reasonable percentum, of cheque/compensation amount, it may bring quick action, as, upon, the imposition of the above condition precedent, and, rather it becoming, evidently breached, thereupon it would obviously threaten the personal liberty of the convict, and, would but for ensuring obviations thereof(s), rather ultimately lead him to make the relevant deposit. Of course, the requisite deposit is required to be neither oppressive nor it is to be un-reasonable. In consequence, the impugned order carried in Annexure P-3, irrespective of the fact, that subsequently the respondent-accused has been admitted to bail, cannot become sustained, as,

it has not directed, the respondent-accused to apart from his furnishing personal, and, surety bonds, hence to also deposit a reasonable percentum of the cheque amount.

19. However, before proceeding to quash the impugned order, for its omitting to make the above condition precedent, upon, the respondent-accused, in the latter's application cast under Section 389 Cr.P.C. rather from the date of making of above order, this Court is also enjoined to bear in mind the fact, that the respondent-accused is also faced, with an unchallenged order of 30.05.2022, wherethrough, she has been directed to deposit 20% of the cheque/compensation amount hence within a period of 90 days, rather from the making of order (supra). However, since the period of the apposite deposit has not yet elapsed, and, in case it does become deposited, and, if not deposited, though it is recoverable in the above stated mode, yet when it becomes realized, it would cause immense financial pain to the estate of the respondent-accused. Therefore, the factum of the un-challenged order made on 30.05.2022, is also required to be borne in mind in determining the reasonable percentum of the compensation / cheque amount, which is enjoined to be deposited by the respondent-accused, rather in modification of the order comprised in Annexure P-3, whereins, the respondent-accused has been directed to, only furnish personal and surety bonds in the sum of Rs.1,00,000/- each, but reiteratedly has not, as a pre-condition qua its taking the fullest effect, been directed to also deposit a reasonable percentum of the compensation / cheque amount.

20. Bearing in mind the above, principle of inter-se proportionality or reasonableness, this Court after setting aside, and,

annulling the impugned order, proceeds to also direct the respondent-accused, to deposit 5% of the cheque amount within three (03) months, before the establishment of the learned trial Judge concerned. However, its disbursement shall be regulated by the outcome of the appeal, as, is subjudice before the learned Appellate Court concerned.

21. This Court hence summarizes the hereinafter principles of law which rather culminate/arise from the discussion:

(i) Section 389 of the Cr.P.C., and, Section 148 of the Act, are, independent of each other;

(ii) Section 389 of the Cr.P.C., is meant for protecting the personal liberty of the convicted person, whereas, Section 148 of "the Act" is auxiliary thereto or is supplemental, to the mandate carried in Section 389 of the Cr.P.C.;

(iii) For non-compliance of a conclusive order made under Section 148 of the Act, it would not bring any ill consequence qua, hence the personal liberty of the convict becoming threatened or jeopardized, and, nor would the errant convict, become amenable, for his being put to judicial custody;

(iv) the learned Appellate Court for ensuring that the order, suspending the execution of the sentence of imprisonment, takes fullest effect, becomes enjoined to, apart from directing the convict to furnish personal and surety bonds, to also direct the convict-applicant

to deposit a reasonable percentum of the cheque amount.

(v) The remedy under Section 389 of the Cr.P.C., is workable towards the convict, whereas, the remedy under Section 148 of "the Act", is, amenable for recourse to the complainant.

(v) The remedy under Section 148 of the Act, can be availed by the complainant, post an order made under Section 389 of the Cr.P.C., and, if so, the learned Appellate Court, while deciding an application under Section 389 of the Cr.P.C., is required to, in asking the convict to deposit a reasonable percentum of the cheque amount, before its establishment, imperatively bear in mind, the factum that the above insistence, may not be beyond 20%. In case, the learned Appellate Court, upon the convict's application cast under Section 389 of the Cr.P.C., rather suspends the execution of the sentence of imprisonment imposed, upon him, by the Convicting Court, and, hence imposes upon him a condition, that he/she deposits 20% of the compensation / cheque amount, then in the subsequent application, preferred under Section 148 of the Act, the learned Appellate Court, may in its discretion, bearing in mind all the relevant facts, inclusive of immense pain being caused to the estate

of the convict, upon, thereafter too, the convict being directed to deposit another 20% of the compensation amount, hence to be realized from the accused's estate, rather exercise the statutory discretion with the utmost legal sagacity.

(vi) If both the applications are simultaneously filed, then both required to be decided in a just and fair manner, and, obviously the principle of inter-se proportionality in making the relevant orders thereons, is to be applied most judiciously.

(vii) The disbursement of monies, as deposited, by the convict, in compliance to an order made under Section 389 Cr.P.C., shall become regulated by the outcome of the apposite trial, but in the event of composition of the offence, occurring amongst the concerned, the appellate Court may cause lawful releases thereof, to the complainant.

22. Disposed of with the aforesaid order.

23. The Registry of this Court is directed to forthwith, circulate a copy of this verdict to all the appellate Courts in the States of Punjab, Haryana, and, in the U.T.Chandigarh.

July 06, 2022 **(SURESHWAR THAKUR)**
'dk kamra'/kavneet singh **JUDGE**

Whether Speaking/reasoned	*Yes / No*
Whether Reportable	*Yes / No*