Before Vikas Bahl, J.

CHANDER PARKASH GUPTA—*Petitioner*

versus

VIJAY KUMAR SINGLA—*Respondent*

CRM-M No.39069 of 2021

September 20, 2021

Code of Criminal Procedure, 1973 – S. 482 – The Negotiable Instruments Act, 1881 – S. 138 – Petitioner convicted by Judicial Magistrate u/s 138 of the Negotiable Instruments Act – Ordered to undergo imprisonment for 2 years and to pay compensation of Rs.1,50,00,000/- – Appeal filed – Complainant filed application seeking direction to petitioner to deposit 20% of the amount of compensation – Additional Sessions Judge directed the petitioner to deposit 20% of the amount of compensation within 60 days – Petitioner challenged order by filing petition u/s 482 Cr.P.C. – Dismissed – Held – Argument that impugned order amounts to review of earlier orders misconceived – Section 148 of the Negotiable Instruments Act does not define stage when power can be exercised – Further Section 148 starts with non-obstante clause – Seeking deposit at a subsequent stage would not come within the meaning of 'review' of the order of suspension of sentence – Further held – Both the petitioner and his co-convict signed the cheque – Both would come within the meaning of 'drawer'- Both of them have filed respective appeals – Order requiring them to make minimum deposit in both appeals would be within the power of appellate court – Further held – Provisions do not restrict the power of appellate court from seeking the said minimum amount from the accused person in case another accused has been asked to deposit the amount.

Held that, first argument of the Learned Counsel for the petitioner to the effect that the impugned orders dated 17.03.2021 and 22.07.2021 respectively, would in fact, amount to a review of the order dated 07.11.2017, is misconceived on two grounds inasmuch as a bare perusal of the provision of Section 148 of the Act of 1881 would show that there is no stage defined as to when the said power can be exercised by the Appellate Court. Moreover, the Hon'ble Supreme Court in the case of Surinder Singh Deswal (Supra) has specifically observed in para 9 of the judgment that the same can be done either on an application filed by the original complainant or even on an

application filed by the appellant/ convict under section 389 of Cr.P.C. for suspension of sentence. The object of this provision is very clear. Once in a case under section 138 of the Act of 1881, the accused persons have been convicted, then, keeping in view the objects of the Act of 1881, it has been mandated that the Appellate Court should direct the accused persons who are filing the appeals to pay a minimum of 20% of the fine/ compensation and in fact, it has been observed that the word 'may' is to be read as 'shall' and thus, as a matter of Rule, the Appellate Court is required to direct the appellant to deposit a minimum amount of 20% of the compensation / fine. By virtue of the impugned orders, the Appellate Court has sought to enforce the said provision of law and also followed the law laid down by the Hon'ble Supreme Court in the case of Surinder Singh Deswal (Supra). Further Section 148 starts with a non-obstante clause, which stipulates that 'notwithstanding anything contained in Code of Criminal Procedure, 1973", thus, any argument sought to be raised to the effect that the same would amount to a review and would not be permissible under Cr.P.C., would be of no effect in view of the non-obstante clause. Moreover, seeking a deposit at a subsequent stage would not come within the meaning of 'review' of the order of suspension of sentence.

(Para 18)

Further held that, with respect to the fourth argument raised by the learned counsel for the petitioner to the effect that both the accused could not have been separately asked to deposit 20% of the amount of compensation each and for the said purpose, reliance is sought to be placed upon section 148 of the Act of 1881, where the term 'drawer' has been mentioned and also upon the interim order passed by a Coordinate Bench of this Court. As per the complainant's case and as per the impugned judgment, the present petitioner and Seema Gupta (petitioner in other case) have signed the cheque and thus, both would come within the meaning of drawer and therefore, the provision of section 148 of the Act of 1881 would independently apply to each of them. The said provision under section 148 of the Act of 1881 would also apply to the petitioner as well as the co-accused Seema Gupta inasmuch as the said power has been given to the Appellate Court to direct the drawer/ accused / appellant to deposit a minimum of 20% of the fine / compensation, who have chosen to file the appeal and in the present case both the accused have been convicted and have preferred their respective appeals and are thus, wanting to agitate their cases on merits. The impugned orders requiring them to make a minimum deposit of 20% in both the appeals would thus, be within the power of

the Appellate Court.

(Para 21)

Further held that, the provisions do not restrict the power of the Appellate Court from seeking the said minimum amount of deposit from the accused person in case another accused person has been asked to deposit the said amount. It would lead to a chaotic situation in case, the argument of the Learned Counsel for the Petitioner on the said aspect is accepted, inasmuch as there would be utter confusion as to which of the appellant is to be directed to deposit the amount and which appellant was to be exempted from making the payment. It could lead to a situation where one accused would wait for the other accused to file an appeal so that the accused/appellant filing the first appeal is made to deposit the amount and the accused who would file the appeal subsequently, could seek exemption. In such a situation, the accused person who is pursuing his right to file an appeal diligently may be burdened with the deposit while saving the other accused from making the deposit. The said situation was never envisaged under the 1881 Act. Moreover once, there is no restriction in the Act from seeking a deposit from the second appellant and the Appellate Court has chosen to put the said condition on both the accused/appellant, this Court does not find that the impugned orders suffer from any irregularity or illegality. In fact, even if the total amount which is to be deposited by both the accused persons/appellants is to be taken into consideration, the same would amount to Rs.60,00,000/- which is still less than the total amount of compensation which has been awarded by the trial Court i.e., Rs.1,50,00,000/-. In fact, a perusal of Section 148 of the Act of 1881 would show that the Appellate Court has the power to direct even the single accused person/appellant to pay much more than 20% of the fine/compensation awarded by the trial Court and thus, the said amount of Rs.60,00,000/- could have been sought to be deposited from one accused/appellant alone also. Reliance on the interim order passed by a Coordinate Bench could not be considered as a binding precedent since this Court is taking a final view on the above said aspect and the facts and circumstances in which the said interim order was passed as also the impugned order in the said case is not before this Court.

(Para 22)

C.S. Pasricha, Advocate, *for the petitioner.*

VIKAS BAHL, J. (ORAL)

(1) Prayer in the present petition filed under Section 482 of

Cr.P.C. is for quashing of Order dated 17.03.2021 (Annexure P-6) as well as Order dated 22.07.2021 (Annexure P-7) passed by the Additional Sessions Judge, Hisar in CRA-557-2017 titled as ***Chander Parkash*** *versus* ***Vijay***, vide which the present Petitioner who has been convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred to as "the Act of 1881") has been directed to deposit 20% of the compensation amount within 60 days, in view of the amended provisions of Section 148 of the 1881 Act and also in view of the law laid down by the Hon'ble Apex Court in Criminal Appeal No. 917-944 of 2019, decided on 29.05.2019 titled as "Surinder Singh Deswal and others versus Virender Gandhi".

(2) The brief facts of the present case are that the respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881against the present petitioner namely Chander Parkash Gupta and one Seema Gupta, who has also independently filed a petition under Section 482 of Cr.P.C.

(3) Vide judgment dated 10.10.2017, the present petitioner and Seema Gupta were held guilty for the commission of offence under Section 138 of the Act of 1881 and on 11.10.2017, both the convicts were sentenced to undergo imprisonment for a period of two years each and to pay double the amount of the cheque. The compensation, thus, awarded was to the tune of Rs.1,50,00,000/-.

(4) Two separate appeals were filed against the said judgment of conviction, one by the present petitioner and the other by Seema Gupta. On 07.11.2017, the sentence of the present petitioner was suspended. Thereafter, on 28.09.2018, an application was filed by the complainant for directing the present petitioner to deposit 20% amount of compensation in view of the amendment in the Act of 1881. In the said application, it was stated that the present petitioner has not deposited any money before the Court. A reply was filed by the Petitioner to the said application and vide impugned order dated 17.03.2021, the Additional Sessions Judge, Hisar, keeping in view the Amended Act No.20 of 2018 with respect to Section148 of the Act of 1881 and also in view of the law laid down by Hon'ble Apex Court in ***Criminal Appeal No.917-944 of 2019 decided on 29.05.2019 titled as Surender Singh Deswal and others*** *versus* ***Virender Gandhi*** and also the law laid down by the Coordinate Bench of this Court in ***M/s Ginni Garments*** *versus* ***M/s Sethi Garments, CRR-9872-2018, decided on 04.04.2019***, the petitioner was directed to deposit 20% of the amount of compensation within a

period of 60 days. The said amount was to be deposited up to 20.05.2021 but however, as is apparent from the Order dated 22.07.2021 (Annexure P-7), the present Petitioner had only paid an amount of Rs.1,00,000/- as part payment of 20% of the compensation amount and undertaken to pay the remaining amount on the next date of hearing.

(5) Aggrieved by the said orders, the present petition has been filed by the petitioner.

(6) Learned counsel for the petitioner has submitted that since in the present case, vide order dated 07.11.2017, the sentence of the petitioner had already been suspended till the decision of the appeal and the petitioner was admitted on bail on his furnishing bail bonds in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the Court and the requisite bail bonds were furnished, accepted and attested, thus, the subsequent application moved on 28.09.2018 seeking deposit of 20% amount of the compensation was not maintainable and in fact, the same would amount to a review of the earlier order passed on 07.11.2017.

(7) The second submission of the learned counsel for the petitioner is that in the present case, at the time of sentencing the petitioner on 11.10.2017, it had been observed that the amount of compensation would be payable to the complainant in case that order attains finality after the decision of the appeal/revision, if any. Reference has been made to para 4 of the order dated 11.10.2017. The relevant portion of the same is reproduced hereinbelow:-

> "In the interest of justice, the convicts are directed to pay the compensation of Rs.One Crore, Fifty lakh (Rs.1,50,00,000/-) to the complainant, as the complainant has not only suffered loss due to the action of accused by way of loosing interest on the amount of cheque, but also incurred an expenses in pursuing the present complaint. However, the amount of compensation would be payable to the complainant in case of this order attaining finality, after decision of appeal/revision, if any."

(8) It has been submitted that in fact, the impugned order dated 17.03.2021 (Annexure P-6) is in contradiction to the order dated 11.10.2017 passed by the Judicial Magistrate Ist Class.

(9) The third submission of the learned counsel for the petitioner is that in reply to the application dated 28.09.2018, the

petitioner had specifically stated that the application dated 28.09.2018 was not maintainable and that the amount of compensation was to be paid to the complainant only in case the order attains finality. However, in the impugned order dated 17.03.2021 (Annexure P-6), the said objections have not been considered and thus, the impugned order is non-speaking.

(10) The fourth submission of the learned counsel for the petitioner is that in fact, in the present case, the present petitioner as well as Seema Gupta (petitioner in the other case) have been asked to deposit 20% of the amount of the compensation and the same cannot be done, as only one ofthe accused could have been asked to deposit 20% of the amount of compensation. For the said purpose, learned counsel for the petitioner has relied upon an interim order dated 03.10.2019 passed by a Coordinate Bench of this Court in CRM-M-42575-2019 titled as ***Rajdeep Randhawa and another*** *versus* ***Tejinder Singh***, in which, operation of the impugned order therein had been stayed vide which the petitioners therein were directed to deposit 25% amount each, subject to the condition that the petitioners therein will deposit a total of 25% of the compensation amount.

(11) This Court has heard the learned counsel for the petitioner.

(12) Section 148 of the Act of 1881, which is relevant for the adjudication of the present case is reproduced hereinbelow:-

> "148.Power of Appellate Court to order payment pending appeal against conviction—
>
> (1) Notwithstanding anything contained in the Code of
>
> Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a **minimum** of twenty per cent of the fine or compensation awarded by the trial Court:
>
> Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.
>
> (2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

> (3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:
>
> Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of theorder, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

(13) A perusal of the said provision would show that notwithstanding anything contained in the Code of Criminal Procedure, 1973, when an appeal is filed against conviction under Section 138, the Appellate Court has the power to direct the appellant to deposit such sum of compensation/fine as awarded by the trial Court subject to a **minimum** of twenty per cent of the fine/compensation.

(14) It has further been provided that the amount payable under sub- section (1) of Section 148 shall be in addition to any interim compensation paid by the appellant under Section 143A of the 1881 Act. Even the time period for making such a deposit has been fixed and the same is to be deposited within sixty days from the date of the order and further restrictions have been put that the said period cannot be extended beyond a period of thirty days and the said extension can be granted only on sufficient cause being shown by the appellant. In fact, under Sub-Section (3), power has been given to the Appellate Court to direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal. A perusal of the said Section would show that it does not restrict the power of the Appellate Court to seek the said deposit only at the time of suspending the sentence of the appellant. The same can be done at any stage during the pendency of the appeal. Moreover, the said provision has a non-obstante clause, wherein nothing contained in Cr.P.C. comes in the way of implementing or enforcing the said provision. The Hon'ble Supreme Court in the case of Surinder Singh Deswal *(Supra),* has held as under:-

> "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 – appellantto 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 daysas 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 stayin 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. Now so far as the submission on behalf of the appellants, relying upon Section 357(2) of the Cr.P.C. that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in the case of Dilip S. Dhanukar (supra) is concerned, the aforesaid has no substance. The opening word of amended Section 148 of the N.I. Act is that "notwithstanding anything contained in the Code of Criminal Procedure…**..".Therefore irrespective of the provisions of Section 357(2) of the Cr.P.C., pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the N.I. Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial Court.**

In view of the above and for the reasons stated herein above, impugned Judgment and Order passed by the High Court does not call for any interference."

(15) A perusal of the above judgment would show that it has been specifically noticed that the Parliament had thought fit to amend Section148 to avoid the Object and Purpose of the enactment of Section 138 from being frustrated and thus, conferred the Appellate Court with the power to direct the appellant/convict to deposit such sum which shall be minimum of 20% of the fine/compensation awarded by the trial Court. It has been observed that the amendment

in Section 148 of the Act of 1881, has not taken away any vested right of appeal of the appellant/convict and thus, the argument to the effect that the same cannot be made applicable retrospectively, was rejected. It was held that Section 148 of the Act of 1881 as amended shall be applicable in respect of the appeals even in a case where criminal complaints under 138 of Act of 1881 were filed prior to the Amendment Act No.20 of 2018 i.e. prior to 01.09.2018. It was further held that the word "*May*" which has been used was generally to be construed as "Rule" or "Shall". Importantly, it was observed that the amount should not be less than 20% of the fine/compensation and the same could be ordered either on an application filed by the complainant or even on an application filed by the appellant/convict under Section 389 of Cr.P.C. for suspension of sentence. Reliance sought to be placed upon the provision of Cr.P.C., more so, Section 357, was rejected on account of the non-obstante clause. The Coordinate Bench of this Court in the case of M/s Ginni Garments (Supra), while dealing with the provisions of Sections 143-A and 148 of the Act of 1881 has held has under:-

> "…. Further, this Court also finds substance in the argument of learned counsel for the respondent that although 'Right to Appeal', per se, is a substantive right, however, no person have a substantive or vested right to claim that he would file and prosecute appeal only in accordance with any particular provision. The Right to Appeal, being a statutory right, has to be availed only within the parameters provided by the said provision. Therefore, if any provision relating to dealing with the appeal by the Appellate Court is altered, the said provision has to be treated as a procedural provision only. Considering the provision of Section 148 of the Act, this Court finds substance in the argument of learned counsel for the petitioners that the said provision does not, in any way, affects the substantive right of the accused, to defend himself or to prosecute his appeal. The provision categorically provides that in case the accused/appellant is acquitted by the Appellate Court; then the amount awarded by the Appellate Court as interim compensation shall be returned to him; by the complainant, along-with interest. No other disqualification is to be inflicted upon the accused/applicant qua defense or prosecution of appeal by him. However, still the essential question to be considered is

whether the provision authorizing the Appellate Court to Order the appellant to deposit a minimum of 20% of the fine or compensation awarded by the Trial Court; isa procedural step or a provision affecting the substantive right of the appellant. In this regard, it deserves to be noted that when the case reaches before the Appellate Court, the appellant/accused has already acquired a status of 'convict', who has already been found guilty of his conduct and sentenced by the Trial Court. In case the Trial Court imposes a fine then making him to pay that amount does not effect his substantive right. Rather it is a matter of procedure only. In case of conviction of an accused, the Trial Court may not impose any fine upon the convict/appellant at all. In such a situation, the Appellate Court would not be able to order the appellant to deposit any amount; because under the provision, Appellate Court is authorized to order deposit of 20% of 'fine' or 'compensation' awarded by the Trial Court. If there is no order of fine or compensation then there cannot be any order of deposit of any amount at the appellate stage. In case the Trial Court imposes a fine, which can be up to twice the amount of the cheque and which can be treated as compensation to be paid to the complainant, in that situation, liability of the accused/appellant has already been determined by the Trial Court. **The liability to pay the amount to the complainant already exists at the time when the appellant comes before the Appellate Court.** It is discretion of the Appellate Court whether to suspend the order of imposition of fine or compensation or not. In case the fine is not stayed by the Appellate Court then the entire amount of fine or compensation, otherwise also, becomes recoverable from the accused/appellant as per the procedure prescribed under Section 421 of Cr.P.C. Hence, if the lower Appellate Court has passed the order of deposit of 20% of amount, then although Section 148 of the Act does not specifically mention that amount ordered to be deposited by the Appellate Court would be recoverable under Section 421 Cr.P.C, however, otherwise being part of fine; the same is liable to be recovered only under Section 421 Cr.P.C**.** **Hence, if the Appellate Court passes the order of deposit of 20% or more of amount of fine or compensation that**

in fact, is a beneficial order for the accused/appellant; because that would mean that the amount of fine or compensation imposed by Trial Court, beyond that 20%, as ordered by the Appellate Court, is ipso facto, being stayed during the pendency of the appeal. Hence instead of prejudicing any substantial right of the appellant this provision is beneficial provision in favour of the accused. Still further there can be a situation where a Trial Court passes sentence of only fine or compensation up to twice the amount of the cheque, without any sentence of imprisonment. In that situation, the fine becomes recoverable immediately. However, Section 424 of Cr.P.C provides that the amount shall be payable in full within 30 days from the date of order of the Trial Court, or at the best in three installments, starting from within 30 days from the order of the Trial Court, and the remaining two installments being paid at the interval of 30 days each. Hence the payment of entire amount of fine or compensation has to be completed within 90 days. The provision of Section 424 Cr.P.C is reproduced below:-

424. Suspension of execution of sentence of imprisonment. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may- •

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three installments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days; •

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the installments thereof, as the case may be, is to be made; and if the amount of the fine or of any installment, as the case may be, is not realised on or before the latest date on

which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once. (2) The provisions of sub- section (1) shall be applicable also in any case in which an order for the payment of money has been made on non- recovery of which imprisonment may beawarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into abond such as is referred to in that subsection, fails to do so, the Court may at once pass sentence of imprisonment."The above-said provision does authorize the Court to suspend the execution of the sentence of 'default imprisonment', if the convict submits bond for payment of the amount on the dates, as ordered by the Court. However, this section also provides the consequences for nonpayment of the amount of fine or compensation as well, which can be cancellation of bond of the accused/convict and sending him to custody, which can be by withdrawal of the order ofsuspension of sentence, leading the appellants/convict to be landed in jail. From this point also the provision of Section 148 of the Act is far-far beneficial for theaccused/convict/appellant in the sense that it permits the Appellate Court to order the convict to deposit only 20% of the fine or compensation, leaving the remaining amount tobe paid beyond a period of 90 days; or not to be paid eventill conclusion of the appeal. In view of the above discussion, it is quite clear that the procedure of recovery of fine or compensation from a convict-appellant of pending appeal already existed in CR.P.C; before advent of the provision as contained in Section 148 of the Act. Hence, no new aspect of coercive recovery of fine or compensation from the appellant is being created through this amended provision. On the contrary,this provision provides more breathing space to the convict/appellant; as compared to the other procedures of recovery, as contemplated under Sections 421 and 424 of Cr.P.C, which is for more onerous in terms of time limit and the consequences. Since the provisions for recovery of fine or compensation from the appellant/convict already existed in the existing procedure relating to the recovery, therefore, the provision introduced vide Section 148 of the Act; which relates only to recovery of amount partly, as interim

> measure, has to be treated purely procedural only, which is otherwise also beneficial for the appellant as compared to the pre-existing provisions. Hence it has to be held that provision of Section 148 of the Act shall govern all the appeals pending on date of enforcement of this provision or filed thereafter."

(16) A perusal of the said judgment would show that it has been observed that although 'Right to Appeal' per se, is a substantive right, however, no person has a substantive or vested right to claim that he would file and prosecute the appeal only in accordance with any particular provision. The Right to Appeal, being a statutory right, has to be availed only within the parameters provided by the said provision and thus, if any provision relating to dealing with the appeal to the Appellate Court is altered, the said provision has to be treated as a procedural provision only. It was held that Section 148 of the Act of 1881, in no way, affects the substantive right of the accused, to defend himself or to prosecute the appeal.

(17) In the above backdrop, this Court would deal with the arguments raised by the learned counsel for the petitioner.

(18) First argument of the Learned Counsel for the Petitioner to the effect that the impugned orders dated 17.03.2021 and 22.07.2021 respectively, would in fact, amount to a review of the order dated 07.11.2017, is misconceived on two grounds inasmuch as a bare perusal of the provision of Section 148 of the Act of 1881 would show that there is no stage defined as to when the said power can be exercised by the Appellate Court. Moreover, the Hon'ble Supreme Court in the case of ***Surinder Singh Deswal*** (*supra*) has specifically observed in para 9 of the judgment that the same can be done either on an application filed by the original complainant or even on an application filed by the appellant/convict under Section 389 of Cr.P.C. for suspension of sentence. The object of this provision is very clear. Once in a case under Section 138 of the Act of 1881, the accused persons have been convicted, then, keeping in view the objects of the Act of 1881, it has been mandated that the Appellate Court should direct the accused persons who are filing the appeals to pay a minimum of 20% of the fine/compensation and in fact, it has been observed that the word "may" is to be read as "shall" and thus, as a matter of Rule, the Appellate Court is required to direct the Appellant to deposit of a minimum amount of 20% of the compensation/fine. By virtue of the impugned orders, the Appellate Court has sought to

enforce the said provision of law and also followed the law laid down by the Hon'ble Supreme Court in the case of ***Surinder Singh Deswal*** (*supra*). Further Section 148 starts with a non-obstante clause, which stipulates that “notwithstanding anything contained in Code of Criminal Procedure, 1973”, thus, any argument sought to be raised to the effect that the same would amount to a review and would not be permissible under Cr.P.C., would be of no effect in view of the non-obstante clause. Moreover, seeking a deposit at a subsequent stage would not come within the meaning of “review” of the order of suspension of sentence.

(19) With respect to the second argument of the learned counsel for the petitioner to the effect that in fact, Judicial Magistrate Ist Class, Hisar, while sentencing the petitioner, had observed that the amount of compensation would be payable to the complainant in case that order attains finality after the decision of the appeal/revision, suffice it to say that as per the impugned orders, the deposit of 20% which has been directed to be made, has not been ordered to be paid to the complainant. Thus, the said argument stands rejected.

(20) The third argument of learned counsel for the petitioner to the effect that the said points were raised in the reply but however, the same have not been considered in the impugned order dated 17.03.2021 (Annexure P-6) and thus, the impugned order is non-speaking, also deserves to be rejected. A perusal of the impugned order would show that a specific reference to the amended provisions of Section 148 of the Act of 1881 as well as the law laid down by the Hon'ble Apex Court in Surender Singh Deswal (*Supra*) and also laid down by a Coordinate Bench of this Court in M/s Ginni Garments (*Supra*) has been made and thus, the impugned order cannot be said to be non-speaking. In fact, a perusal of para 9 of the judgment of the Hon'ble Supreme Court in the case of Surinder Singh Deswal (*Supra*) would show that special reasons are to be given in case the said amount is not directed to be deposited from the accused/appellant. Learned counsel for the petitioner has very fairly stated that the first objection taken in para 1 of the reply to the effect that the amendment would not apply to the appeal filed in the year 2017 is res integra and is covered by the judgment of the Hon'ble Supreme Court in Surinder Singh Deswal (*Supra*), against the Petitioner. Second objection in the reply with respect to the amount of compensation to be payable to the Complainant only in case the order attains finality, has already been rejected in the earlier part of this order. Third objection regarding the

application for deposit having been moved only to pressurize the Petitioner to enter into a compromise is baseless and is thus, rejected. Thus, all the objections raised in the reply are devoid of merits and deserve to be rejected. The Impugned Order has been passed keeping in view the amended provisions of Section 148 as well as the law laid down by the Hon'ble Apex Court and is thus, legal and valid and deserves to be upheld.

(21) With respect to the fourth argument raised by the learned counsel for the petitioner to the effect that both the accused could not have been separately asked to deposit 20% of the amount of compensation each and for the said purpose, reliance is sought to be placed upon Section 148 of the Act of 1881, where the term "drawer" has been mentioned and also upon the interim order passed by a Coordinate Bench of this Court. As per the complainant's case and as per the impugned judgment, the present petitioner and Seema Gupta (petitioner in other case) have signed the cheque and thus, both would come within the meaning of drawer and therefore, the provision of Section 148 of the Act of 1881 would independently apply to each of them. The said provision under Section 148 of the Act of 1881 would also apply to the petitioner as well as the co-accused Seema Gupta inasmuch as the said power has been given to the Appellate Court to direct the drawer/accused/appellant to deposit a minimum of 20% of the fine/compensation, who have chosen to file the appeal and in the present case both the accused have been convicted and have preferred their respective appeals and are thus, wanting to agitate their cases on merits. The impugned orders requiring them to make a minimum deposit of 20% in both the appeals would thus, be within the power of the Appellate Court.

(22) The provisions do not restrict the power of the Appellate Court from seeking the said minimum amount of deposit from the accused person in case another accused person has been asked to deposit the said amount. It would lead to a chaotic situation in case, the argument of the LearnedCounsel for the Petitioner on the said aspect is accepted, inasmuch as there would be utter confusion as to which of the appellant is to be directed to deposit the amount and which appellant was to be exempted from makingthe payment. It could lead to a situation where one accused would wait for the other accused to file an appeal so that the accused/appellant filing the first appeal is made to deposit the amount and the accused who would file the appeal subsequently, could seek exemption. In such a situation, the

accused person who is pursuing his right to file an appeal diligently may be burdened with the deposit while saving the other accused from making the deposit. The said situation was never envisaged under the 1881 Act. Moreover once, there is no restriction in the Act from seeking a deposit from the second appellant and the Appellate Court has chosen to put the said condition on both the accused/appellant, this Court does not find that the impugned orders suffer from any irregularity or illegality. In fact, even if the total amount which is to be deposited by both the accused persons/appellants is to be taken into consideration, the same would amount to Rs.60,00,000/- which is still less than the total amount of compensation which has been awarded by the trial Court i.e., Rs.1,50,00,000/-. In fact, a perusal of Section 148 of the Act of 1881 would show that the Appellate Court has the power to direct even the single accused person/appellant to pay much more than 20% of the fine/compensation awarded by the trial Court and thus, the said amount of Rs.60,00,000/- could have been sought to be deposited from one accused/appellant alone also. Reliance on the interim order passed by a Coordinate Bench could not be considered as a binding precedent since this Court is taking a final view on the abovesaid aspect and the facts and circumstances in which the said interim order was passed as also the impugned order in the said case is not before this Court.

(23) Moreover, in the present case, the Petitioner was, vide order dated 17.03.2021, directed to deposit the amount of 20% of the compensation up to 20.05.2021 and as per the order dated 22.07.2021, the Petitioner had paid an amount of Rs.1,00,000/- in compliance to the order dated 17.03.2021 and had undertaken to pay the remaining amount on the next date of hearing and his statement to the said effect was also recorded and on account of the said undertaking, the Additional Sessions Judge had extended the time for the deposit up to 24.09.2021. Thus, the Petitioner- Chander Parkash Gupta, is also estopped from challenging the impugned orders.

(24) Thus, keeping in view the abovesaid facts and circumstances, the present petition is dismissed.

JS Mehndiratta