***HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Criminal Revision Case Nos.257, 259 and 260 of 2022

% Dated 28-04-2022

Crl.R.C.No.257 of 2022:

Sanapala Taviti Naidu

..... Petitioner

Vs.

$ 1. Vaddi Narendra Kumar;
2. State rep. by its Public Prosecutor, High Court of A.P, Amaravati.

.....Respondents

! Counsel for the petitioner : Sri Jakkamsetti Saraschandra Babu, Learned counsel.

^ Counsel for the 1st respondent: -None-
Counsel for 2nd respondent State: Learned Addl.Public Prosecutor

<GIST:

> HEAD NOTE:

? Cases referred:

[1] (2019) 11 SCC 341 = (2019) 3 SCC (Crl) 461
[2] (2021) 1 SCC 596

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

Criminal Revision Case Nos.257, 259 and 260 of 2022

Crl.R.C.No.257 of 2022:

Sanapala Taviti Naidu

..... Petitioner

Vs.

1. Vaddi Narendra Kumar;
2. State rep. by its Public Prosecutor, High Court of A.P, Amaravati.

.....Respondents

COMMON ORDER PRONOUNCED ON: 28-04-2022

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? --
2. Whether the copies of judgment may be marked to Law Reporters/Journals -Yes-
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

Criminal Revision Case Nos.257, 259 and 260 of 2022

COMMON ORDER:

Challenging the impugned orders dated 14.03.2022 passed in Crl.M.P.Nos.21, 22 and 23 of 2022 in Criminal Appeal Nos.60, 61 and 62 of 2022 on the file of the III Additional Sessions Judge, Bhimavaram, respectively, whereby while suspending the execution of sentence of imprisonment imposed against the petitioner, the appellate Court has ordered the revision petitioner to deposit 20% of the compensation amount in terms of Section 148 of the Negotiable Instruments Act, 1881 (for short, the "N.I. Act"), these Criminal Revision Cases are preferred by the revision petitioner.

2) Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the 2nd respondent State.

3) The revision petitioner is the accused in three separate Calendar Cases in C.C.Nos.894, 888 and 889 of 2017 on the file of the II Additional Judicial Magistrate of First Class, Bhimavaram. The said criminal cases are filed against him by the 1st respondent complainants in these three Criminal Revision Cases under Section 138 of the N.I. Act on the ground that the cheques that were issued by him for discharge of legally enforceable debt or liability were dishonoured. The revision petitioner was prosecuted for the said offence and eventually he was found guilty for commission of the said offence punishable under Section 138 of the N.I. Act in all the three cases and he

was convicted for the said offence and was sentenced to undergo imprisonment and to pay compensation to the 1st respondent complainants in these Criminal Revision Cases.

4) Aggrieved thereby he has preferred three appeals in Crl.Appeal Nos.60, 61 and 62 of 2022 to the Court of the III Additional Sessions Judge, Bhimavaram. Alongside the appeals, he has filed three petitions under Section 389(1) Cr.P.C. for suspension of execution of sentence of imprisonment imposed against him including the payment of compensation as ordered by the trial Court. The learned III Additional Sessions Judge, Bhimavaram, by the impugned orders, dated 14.03.2022, ordered for suspension of execution of sentence of imprisonment imposed against the petitioner by the trial Court and further ordered the revision petitioner to deposit 20% of the compensation amount with the trial Court within 60 days from the date of the order in terms of Section 148 of the N.I. Act.

5) The revision petitioner is aggrieved by the said orders pertaining to deposit of 20% of the compensation amount with the trial Court in terms of Section 148 of the N.I.Act. Therefore, the present Criminal Revision Cases are preferred questioning the legality and validity of the said orders whereby he was directed to deposit 20% of the compensation amount.

6) Learned counsel for the petitioner would submit that the order to deposit 20% of the compensation amount is not valid under law. According to him, the complaints were filed in the trial Court under Section 138 of the N.I. Act in the year 2017 and

the amendment by way of incorporating Section 148 of the N.I. Act to deposit 20% of the compensation amount when appeal is preferred against the judgment of conviction, came in to effect in the year 2018 i.e. on 01.09.2018 and as such the said amendment has no application to the cases instituted prior to said amendment. Therefore, he would submit that the impugned orders to deposit 20% of the compensation amount are not valid under law. In other words he would contend that Section 148 of the N.I. Act has no retrospective effect and operates prospectively. So, it has no application to cases filed in trial Courts prior to the date on which the amendment came into force. He then contends that the order to deposit 20% of the compensation amount is too exorbitant and if at all this Court sustain the said orders, he would pray for reduction of the said compensation amount from 20% to either 15% or 10% of the compensation amount. He would submit that as the word "may" is used in Section 148 of the N.I. Act, Court got discretion to reduce the amount.

7) Learned Additional Public Prosecutor for the 2nd respondent State would submit that the said contention that the amended provision of Section 148 of the N.I. Act has no application to the cases instituted in the trial Court prior to the date of amendment has no merit and the same is unsustainable under law. He would submit that as per settled law the said amendment under Section 148 of the N.I. Act applies to all the appeals preferred against conviction after the date of the said amendment i.e.

01.09.2018. He contends that as these appeals are filed recently in the year 2022 after the said amendment came into force, the said amendment is clearly applicable to the present appeals. In support of his contention, he relied on the judgment of the Apex Court rendered in the case of **Surinder Singh Deswal @ Colonel S.S.Deswal v. Virender Gandhi**[1]. He would also contend that the request of the revision petitioner to reduce the compensation amount from 20% is also liable to be turned down. He would contend that it is clear from Section 148 of the N.I. Act that minimum of 20% of the fine or compensation awarded by the trial Court is to be deposited while preferring an appeal against the judgment of conviction and as the word "minimum" is used, no discretion is left with the appellate Court to order for deposit of less than 20% of the compensation amount. So, he would finally submit that the impugned orders of the appellate Court are perfectly sustainable under law and it warrants no interference in these Criminal Revision Cases. Therefore, he would pray for dismissal of these Criminal Revision Cases in view of the aforesaid submissions.

8) As noticed supra, the contention of the revision petitioner is two fold. Firstly, he contends that as the cases are instituted in the trial Court under Section 138 of the N.I.Act in the year 2017, that Section 148 of the N.I. Act which was incorporated by way of amendment in the year 2018 cannot be made applicable to the cases instituted prior to the said date of amendment and that

[1] (2019) 11 SCC 341 = (2019) 3 SCC (Crl) 461

Section 148 of the N.I. Act has no retrospective effect. Then he contends that even otherwise Court got discretion to reduce the amount from 20%.

9) As regards the first contention is concerned, no doubt the amendment came into force on 01.09.2018. Section 148 of the N.I. Act was incorporated by way of amendment in the N.I. Act with effect from 01.09.2018. The newly inserted provision under Section 148 of the N.I.Act mandates that notwithstanding anything contained in the Criminal Procedure Code, in an appeal preferred against conviction under Section 138 of the N.I. Act, the appellate Court may order the appellant to deposit a sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. In terms of the said Section 148 of the N.I. Act, the appellate Court while suspending the execution of sentence ordered the revision petitioner to deposit 20% of the compensation amount within 60 days from the date of that order with the trial Court. Eventhough the cases were instituted in the trial Court in the year 2017 prior to the date on which the amendment came into force with effect from 01.09.2018, as per settled law, the said amended provision applies to all the appeals that are filed against conviction for the offence punishable under Section 138 of the N.I.Act after the said amendment came into force. The legal position in this regard is no more *res integra* and the same has been well settled by the Apex Court in the judgment cited by the learned Additional Public Prosecutor for the 2nd respondent State rendered in the case of **Surinder Singh Deswal**

@ **Colonel S.S.Deswal**[1]. The same contention that the amended provision of Section 148 of the N.I. Act which came into force in the year 2018 cannot be made applicable to the cases instituted prior to the date of amendment was raised before the Apex Court. The Apex Court rejected the said contention. The Apex Court held that Section 148 of the N.I. Act applies to all the appeals that are preferred after the amendment came into force with effect from 01.09.2018. Therefore, since the appeals under these revisions are preferred in the year 2022 after the amendment came into force in the year 2018, in view of the dictum laid down by the Apex Court in the above referred judgment, the amended provision of Section 148 of the N.I. Act squarely applies to the said appeals.

10) In arriving at the above conclusion that Section 148 of the N.I. Act applies even to cases instituted prior to its amendment and to all the appeals which are filed against conviction after the said Section 148 of the N.I. Act came into force, the Apex Court has considered the Objects and Reasons in incorporating Section 148 of the N.I. Act by way of amendment in the year 2018. It is held as follows in the said judgment:

> "While considering the aforesaid issue/question, the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act, as amended by way of Amendment Act No. 20/2018 and Section 148 of the N.I. Act as amended, are required to be referred to and considered, which read as under:
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> > "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 realize 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.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:

(i) to insert a new Section 143A in the said Act to provide that the Court trying an offence under Section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new Section 148 in the said Act so as to provide that 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.

4. The Bill seeks to achieve the above objectives."

11) After considering the said Objects and Reasons in incorporating Section 148 of N.I. Act, the Apex Court then held as follows:

"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, 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 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 N.I. 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 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 Garikapatti Veeraya v. N.Subbaiah Choudhry (AIR 1957 SC 540) and Videocon International Limited v. SEBI ((2015) 4 SCC 33), 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. ……"

12) Therefore, in view of the law enunciated by the Apex Court in the above judgment, the said contention of the learned counsel for the petitioner that Section 148 of the N.I. Act has no application to cases instituted prior to the amendment came into force is hereby rejected.

13) As regards the second contention that the Court got discretion to reduce the compensation amount from 20% is concerned, as can be seen from the express language employed in Section 148 of the N.I. Act, a minimum sum of not less than 20% of the compensation or fine awarded is to be deposited. Therefore, as it is ordained that minimum sum of 20% is to be ordered to be deposited and as it is a statutory mandate, no discretion is left with the Court to order to deposit less than 20% of the compensation amount. In fact, it was also contended before the Apex Court in the above cited case that as the word "shall" is not used and only the word "may" is used in the Section, that a discretion is given to the Court to reduce the amount from 20%. The said contention was also not accepted by the Apex Court. The Apex Court held that having regard to the Objects and Reasons of the amended Section 148 of the N.I. Act, though the word "may" is used that it is to be generally construed as a "rule" or "shall". Therefore, the appellate Court has rightly ordered to deposit 20% of the compensation amount.

14) Learned counsel for the revision petitioner relied on the judgment of the Apex Court rendered in the case of **Shatrughna Baban Meshram v. State of Maharashtra**[2] in support of his contentions. The facts of the said case are totally distinguishable from the facts of the present case. It was not a case under Section 148 of the N.I. Act. So, the ratio laid down in the said judgment is of no avail to the case of the revision petitioner.

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[2] (2021) 1 SCC 596

15) Therefore, in view of the law enunciated by the Apex Court in the above cited **Surinder Singh Deswal @ Colonel S.S.Deswal**' case, both the contentions of the learned counsel for the revision petitioner hold no water and the same cannot be countenanced.

16) Therefore, the impugned orders of the appellate Court to deposit 20% of the compensation amount in terms of Section 148 of the N.I. Act are perfectly sustainable under law and they warrant no interference in these Criminal Revision Cases.

17) Resultantly, all these three Criminal Revision Cases are dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:28.04.2022.

Note:
L.R. copy to be marked.
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