

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **Crl.M.C. No. 2245/2008**

Judgment reserved on: November 25, 2008

Judgment delivered on: 02.02.2009

Om Prakash Bajaj petitioner

Through: Mr. O.P. Khadharia, Advocate

versus

Som Dutt Bajaj &Anr. Respondents

Through: Mr. S.M. Pandey, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

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1. By way of the present petition the petitioner seeks to challenge the order dated 4.7.2008 passed by Mr. P.S. Teji Additional Sessions Judge, Delhi in Crl. APP No. 41/2008.

2 . Brief facts of the case as set out in the petition, which are relevant for deciding the present case, are as under:

The respondent filed a complaint case under Section 138 of the Negotiable Instruments Act (hereinafter referred as NI Act) against the petitioner on a dishonoured cheque bearing No.592820 dated 31.1.2006 for Rs.4,00,000/-of Punjab National Bank, Rana Pratap Bagh, Delhi in favour of the complainant, against the part payment of the award passed against the accused/respondent, issued as a security to the arbitrator for the smooth functioning of the arbitration proceedings and its compliance. The petitioner was found guilty under Section 138 and he was sentenced by order dated 29.5.2008 with a compensation in the sum of Rs.07 lacs to the complainant along with a simple imprisonment of one year. The petitioner preferred an appeal under Section 374 Cr.P.C. 1973 and the same was listed before the Court of Shri P.S. Teji, ASJ on 4.7.2008 along with an application for suspension of sentence. The same was heard and in the meanwhile the recovery of compensation of Rs.7,00,000/- was suspended and along with this, the petitioner was also directed to deposit a sum of Rs.4

lacs (original cheque amount) before learned M.M. within 30 days.

3 . Mr. O.P.Khadaria, counsel for the petitioner submitted that the appellate court cannot impose any condition at the time of admission of appeal. Counsel further stated that right to file an appeal is not a procedural right but a substantive right. Assailing the order of the appellate court counsel contended that the learned appellate court has imposed a fresh condition upon the petitioner to deposit a sum of Rs.4 lacs before the court of learned magistrate within a period of 30 days, while suspending the recovery and compensation of Rs. 7 lacs as directed by the learned Magistrate. The contention of the counsel for the petitioner is that order of the appellate court is itself contrary as on the one hand the court has stayed the recovery of compensation of Rs.7 lacs and at the same time has directed deposit of sum of Rs. 4 lacs. Placing reliance on Section 357 (3) of Cr.P.C., which gives power to the court to award compensation at the time of imposing a sentence of which the fine does not form part, counsel contended that sub-section (3) of Section 357 cannot be given different interpretation other than that of sub-Section (2) of Section 357.

Counsel for the petitioner placed reliance on the judgment of the Apex Court in **Dilip S. Dahanukar Vs. Kotak Mahindra Co.Ltd & Anr. 2007 II AD(Cr.) SC 533**. Relevant paragraphs of the said judgment are reproduced as under:-

“12. We may take notice of some of the decisions operating in the field in this behalf.

In **Garikapati Veeraya v. N. Subbiah Choudhry and Ors.** MANU/SC/0008/1957, this Court opined:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

19. A Constitution Bench of this Court in **Mardia Chemicals Ltd. and Ors. v. Union of India and Ors.** MANU/SC/0323/2004, where the constitutionality of provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 were questioned qua Section 17(4) thereof, held: "In view of the discussion already held in this behalf, we find that

the requirement of deposit of 75% of the amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down."

26. Compensation is awarded towards sufferance of any loss or injury by reason of an act for which an accused person is sentenced. Although it provides for a criminal liability, the amount which has been awarded as compensation is considered to be recourse of the victim in the same manner which may be granted in a civil suit. So far as Appellant No. 2 is concerned, no fine has been imposed on him. He was directed to pay compensation.

27. The question is as to whether the matter would come within the purview of Sub-section (3) and if so, whether Sub-section (2) of Section 357 would automatically be attracted.

28. The purposes for application of fine imposed has been set out in Clauses (a) to (d) of Sub-sections (1) of Section 357. Clause (b) of sub- Section (1) of Section 357 provides for payment of compensation out of the amount of fine. The purpose enumerated in Clause (b) of Sub-section (1) of Section 357 is the same as Sub-section (3) thereof, the difference being that whereas in a case under Sub-section (1) fine imposed forms a part of the sentence, under Sub-section (3) compensation can be directed to be paid whence fine does not form a part of the sentence.

29. The fine can be imposed only in terms of the provisions of the Act. Fine which can be imposed under the Act, however, shall be double of the amount of the cheque which stood dishonoured. When, however, fine is not imposed, compensation can be directed to be paid for loss or injury caused to the complainant by reason of commission of the offence. Clause (b) of Sub-section (1) of Section 357 only provides for application of amount of fine which may be in respect of the entire amount or in respect of a part thereof. Sub-section (3) of Section 357 seeks to achieve the same purpose.

30. We must, however, observe that there exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a 'fine' but the legal fiction raised in relation to recovery of fine only, it is in that sense 'fine' stands on a higher footing than compensation awarded by the Court.

31. If, therefore, under Sub-section (2) of Section 357, realization of fine, at least in respect of the factor(s) enumerated in Clause (1) of sub-Section to be stayed automatically, we see no reason as to why the legislative intent cannot be held to apply in relation to amount of compensation directed to be paid in terms of Sub-section (3).

34. It is, therefore, seen that consideration for payment of compensation is somewhat different from payment of fine. It is, to the said extent applied differently. As would be noticed a little later, it is necessary to probe into the capacity of the accused to pay the amount and the purpose for which it is directed to be paid.

42 It does not appeal to us that although a compensation payable out of the quantum of fine would remain stayed under Sub-section (2) of Section 357 of the Code, if a compensation is directed to be paid under sub-Section (3) thereof, the same would not attract the said provision. [See **P. Suresh Kumar v. R. Shankar 2007 (4) SCALE 143**]

43. Magistrates cannot award compensation in addition to fine. When a fine is imposed, however, the private party has no right to insist that compensation may be awarded to him out of the amount of fine. The power to award compensation under Section 357(3) is not an ancillary power. It is an additional power. {See **Balraj v. State** 1995 CrL. Law Journal 3217.

44. Clause (b) of Sub-section (1) of Section 357 and Sub-section (1) of Section 357 and Sub-section (3) of Section 357 seek to achieve the same purpose. What is necessary is to find out the intention of the law maker and the object sought to be achieved. Sub-section (2) of Section 357 uses the word 'fine'. It does not say that what would be stayed i.e. application of fine. Sub-Section 2 of Section 357, in our opinion, does not contemplate any other interpretation. Even assuming that Mr. Lalit was correct in his submission, still then Sub-section (3) would be squarely attracted.

45. The amount of compensation, in view of the legal fiction, may be recovered under Section 421 of the Code. But the amount of compensation, having regard to Sub-section (2) of Section 357 of the Code cannot be recovered forthwith unless the period of appeal expires.

51. If realization of an amount of compensation payable to a victim as envisaged under Clause (d) of Sub-section (1) of Section 357 is to be stayed Page 1821 under Sub-section (2) thereof, there is no

reason why the amount of compensation payable in terms of Sub-section (3) shall not receive the same treatment.

54. Unfortunately, the Legislature has not made any express provision in this behalf. In absence of any express provision, the question must be considered having regard to the overall object of a statute. We have noticed hereinbefore that Article 21 of the Constitution of India read with Section 374 of CrI.P.C. confers a right of appeal. Such a right is an absolute one. In a case where a judgment of conviction has been awarded, the Court can release a person on bail having regard to the nature of offence but as also the other relevant factors including its effect on society. A person upon arrest may have to remain in jail as an under trial prisoner. So would a person upon conviction. A person may also have to remain in jail, in the event he defaults in payment of fine, if he is so directed. But when a direction is issued for payment of compensation, having regard to Sub-section (2) of Section 357 of the Code, the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the Court to stay the operation of that part of the judgment whereby and whereunder compensation has been directed to be paid, which would necessarily mean that some conditions therefore may also be imposed. A fortiori a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount.

57. A penal statute, in the event, the different meanings are possible to be given, must be construed liberally in favour of an accused. While the Court shall give due weight to the need of the victim, it cannot ignore the right of an accused.”

4 . On the other hand, counsel for the respondent vehemently refuted the submissions made by the counsel for the petitioner. Counsel for the respondent although placed reliance on the aforesaid judgment of the Apex Court but has drawn attention of this court to the concluding para of the judgment which is reproduced as under:

“46. We, therefore, are of the opinion:

i) In a case of this nature, Sub-section (2) of Section 357 of the Code of Criminal Procedure would be attracted even when Appellant was directed to pay compensation;

ii) The Appellate Court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;

iii) The amount of compensation must be a reasonable sum;

iv) The Court, while fixing such amount, must have regard to all relevant factors including the one referred to in Sub-section (5) of 357 of the Code of Criminal Procedure;

v) No unreasonable amount of compensation can be directed to be paid.”

5 . The contention of the counsel for the respondent was that as per the directions given by the Apex Court the amount of compensation must be the reasonable amount. Counsel thus submitted that the appellate court at the time of entertaining the statutory appeal was competent enough to direct the appellant to pay some compensation amount but such an amount should be reasonable and not an arbitrary amount. Counsel for the respondent also invited attention of this court to para 4 of the said judgment. The contention of the counsel for the respondent was that in the said case appeal was preferred by the appellant as the appellate court had given the directions to the appellant to deposit sum of Rs.5 lacs within a period of four weeks and finding the said directions to be

unreasonable, the Apex Court in the concluding para of the said judgment observed that such an amount of compensation should be reasonable amount and accordingly the appellant was directed to deposit amount of Rs.1 lac in place of Rs. 5 lacs as directed by the appellate court and Rs. 15 lacs as directed by the court of Metropolitan Magistrate.

6. I have heard learned counsel for the parties at considerable length and gone through the record.

7. Before dealing with the rival contentions of the parties it would be worthwhile to reproduce Section 357 CrPC, which is as under:

"357. Order to pay compensation.

(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment order the whole or any part of the fine recovered to be applied-

(a) In defraying the expenses properly incurred in the prosecution,

(b) In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion, of the court, recoverable by such person in a Civil Court;

(c) When, any person is convicted of any offence for having caused the death of another person or of having abetted the commission of shelf all offence, in paying in, compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855) entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) When any person is convicted of any offence which includes theft, criminal, misappropriation, criminal breach of trust or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of

stolen property knowing or having reason to believe the same to be stolen in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case, which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.

(3) When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by all Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section."

8. From the perusal of the above provision, it is apparent that if a Court imposes a sentence of fine or a sentence or where it forms a part thereof, the Court is entitled to direct that whole or any part of the fine recovered, to be applied to in respect of the factors enumerated in Clauses (a), (b), (c) or (d) of sub section 1 of Section 357 Cr.P.C. Section 357(1) deals with two types of cases, namely, (i) where only a sentence has been imposed; and (ii) where fine also forms part of the sentence.

9. I do not agree with the contention of the counsel for the petitioner that the condition of payment of Rs. 4 Lacs was

imposed on the petitioner for admission of the appeal from the order of the trial court. The relevant portion of the impugned order is reproduced as under:

“4.7.2008

Prsent : Shri O.P. Khadaria, counsel for the appellant

I have heard the counsel for the appellant. The suspension of sentence of imprisonment granted till the date is hereby extended during the pendency of appeal, subject to following conditions:-

(i) Deposit of sum of Rs.4 lacs (original cheque amount) before the Id. MM within 30 days.”

10. Perusal of the said order clearly reveals that the condition of payment of Rs. 4 Lacs was imposed for suspension of sentence, prayed for by the petitioner.

11. Be that as it may, the main issue before this court is the validity of the condition of making payment of Rs. 4 Lacs out of 7 Lacs. In the instant case, although the Trial Court at the time of passing of order and sentence gave directions to the appellant to pay compensation in the sum of Rs. 5 lakhs to the respondent complainant, but in fact the Trial Court has used a wrong expression of “compensation” while in fact the appropriate expression meant to be used in the given facts should have been “fine”. It is a settled legal principle of

“138. Dishonour of cheque for insufficiency, etc., of funds in the accounts

Provided that nothing contained in this section shall apply unless-

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(b) The payee or the holder induce course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, ³["within thirty days"] of the receipt of information by him from the bank regarding the return of the cheques as unpaid, and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

12. In the backdrop of the above provision the learned Trial Court passed the following sentence order:-

“Having heard the above mentioned facts and circumstances as putforth, I am of the considered opinion that it will be in the interest of justice, if the convict is sentenced the simple imprisonment for One year. Dishonoured cheque amount in this case is of Rs. 04 lacs. Therefore, accused/convict is also directed to pay a compensation in the sum of Rs. 07 lacs to the complainant. Copy of the order be given to the accused immediately free of cost. File be consigned to Record Room.”

13. A bare look at the aforesaid order amplifies that the Court was conscious of the amount of the dishonoured cheque based on which the complaint under Section 138 of the Negotiable Instruments Act was filed by the complainant/respondent, which was a dishonoured cheque of Rs. 4 lakhs and taking into consideration the said amount, directions were given to the appellant to pay a sum of Rs. 7 lakhs to the complainant/respondent. The said direction has been manifestly given under Section 138 of the Negotiable Instruments Act. In

the said Section nowhere the word “compensation” has been used, but the expression used is “fine”, but instead of using the correct expression in the order of sentence the learned Trial Court in a casual manner has used the word “compensation” and due to this use of expression “compensation” the appellant has built up his case as if the said award of compensation is under Section 357(2) of the Code of Criminal Procedure. In the judgment which both the counsel cited i.e. **Dilip S. Dahanukar (supra)**, wherein the Apex Court has gone in great detail about the true scope of Section 357 of Cr.P.C., the issue before the Apex Court was whether the Trial Court gave directions for the payment of compensation to the complainant under Section 357(3) Cr.P.C. or whether directions were given for payment of fine under Section 357 (1) Cr.P.C. It would be relevant to reproduce the order of sentence dated 23rd February, 2006 passed by the Trial Court in the said case before the Apex Court:-

“The accused No. 1 company M/s. Good value Marketing Co. Ltd. stands convicted for the offence punishable under Section [138](#) r.w. [141](#) of Negotiable Instruments Act.

The accused No. 1 company, is sentenced to pay a fine of Rs. 25,000/- (Rupees Twenty Five Thousand only). In default of payment of fine, the accused No. 2 Mr. Dilip Dahanukar, the Chairman of accused No. 1 and representative at the trial, shall suffer S.I. for 1 month.

The accused No. 2 Mr. Dilip S. Dahanukar, stands convicted for the offence punishable under Section [138](#) r.w. [141](#) of Negotiable Instruments Act, 1881.

The accused No. 2 is sentenced to suffer S.I. for 1 month.

The accused No. 2 is also directed to pay compensation to the complainant, quantified (sic) at Rs. 15,00,000/- (Rupees Fifteen lakhs only), under Section [357\(3\)](#) of Cr.P.C. The accused No. 2 is entitled to pay the amount of compensation in two equal monthly instalments of Rs. 7,50,000/- each. The first instalment of Rs. 7,50,000/- shall be paid on or before 23-03-2006 and the second instalment of Rs. 7,50,000/- shall be paid on or before 24-04-2006 in default of payment of the amount of compensation the accused No. 2 shall suffer further S.I. for 2 month.”

14. The said order of the Trial Court was challenged before the Appellate Court and while admitting the appeal the Appellate Court gave directions to the appellant company to deposit a sum of Rs. 5 lakhs each in place of compensation of Rs. 15 lakhs awarded by the learned Trial Court. The writ petition was filed by the company questioning the liability of the order of the Appellate Authority, but without any success whereafter the matter came before the Apex Court for consideration. It would be thus noticed in the facts before the Apex Court clear directions were given in the order of sentence to pay a compensation under Section 357(3) Cr.P.C., while in the facts of the present case compensation has been directed by the Trial Court based on the amount of dishonoured cheque of Rs. 4 lakhs, fine of which could be imposed by the Trial Court

to twice the amount of the cheque, but in place of the double of the amount directions were given for the payment of an amount of Rs. 7 lakhs to the appellant. This order under no circumstances can be considered to have been passed by the Trial Court under Section 357(3) Cr.P.C. but same in fact has been passed deriving the mandate from Section 138 of the Negotiable Instruments Act. Even in the absence of **Dilip S. Dahanukar (Supra)** case where Trial Court gave directions for the payment of compensation amount, the Apex Court has not placed any fetters on the power of the Appellate Court but merely put the appellant to reasonable terms while suspending his sentence. Relevant para 73 of the said judgment in this regard is referred as under:-

“73. We, therefore, are of the opinion:

- i) In a case of this nature, Sub-section (2) of Section [357](#) of the Code of Criminal Procedure would be attracted even when Appellant was directed to pay compensation;
- ii) The Appellate Court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;
- iii) The amount of compensation must be a reasonable sum;
- iv) The Court, while fixing such amount, must have regard to all relevant factors including the one referred to in Sub-section (5) of 357 of the Code of Criminal Procedure;

v) No unreasonable amount of compensation can be directed to be paid.”

15. Based on the said conclusions the Apex Court found it reasonable to give directions to the appellant in the said case to deposit a sum of Rs. 1 lakh in place of Rs.15 lakhs directed by the Trial Court and Rs. 5 lakh directed by the Appellate Court. It would be thus manifest that the appellate Court although cannot impose any term as a condition precedent for entertaining an appeal against the order of the conviction, the same being a constitutional and statutory right, but at the time of passing an order for suspension of sentence under Section 389 Cr.P.C. the appellant approaching the Court seeking suspension of his sentence can be put to reasonable terms depending upon the facts of a given case.

16 . In view of the foregoing, the judgment of the Apex Court entitled **Dalip S. Dahanukar (Supra)** does not apply to facts of the case. It is no more res integra that the observations of the courts cannot be read as Euclid’s Theorem and that too taken out of its context. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is

placed. In this regard, the Hon'ble Apex Court in **Union of India Vs. Amrit Lal Manchanda - (2004) 3 SCC 75** observed as under:-

15. Cases involving challenges to orders of detention before and after execution of the order stand on different footings. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton*⁷ (AC at p. 761) Lord Macdermott observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge...."

16. In *Home Office v. Dorset Yacht Co.*⁸ Lord Reid said (at All ER p. 297g-h), "Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board*⁹ Lord Morris said: (All ER p. 761c)

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial

utterances are made in the setting of the facts of a particular case.

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

17 . As already discussed above, in the instant case, the Appellate Court has given direction for suspension of sentence as awarded by the Trial Court, subject to the appellant depositing a sum of Rs. 4 lakh before the learned MM within a period of 30 days and with certain other conditions and the said condition has been imposed not for entertaining an appeal but for the suspension of sentence as was being sought by the appellant. Admittedly the complaint was based on a dishonoured cheque for a sum of Rs. 4 lakhs and, therefore, to secure the rights of the complainant, the Trial Court had imposed a compensation/fine of Rs. 7 lakhs upon the appellant, which was reduced to Rs. 4 lakhs by the Appellate Court. The Appellate Court was fully conscious of the amount of the cheque involved in the case as would be evident from the order of the Appellate Court which is reiterated as under:-

“(i) Deposit of sum of Rs. 4 lacs (original cheque amount) before the Ld. MM within 30 days.

(ii) The amount so deposited before the Ld. MM shall not be released without the order of this Court.

(iii) Furnishing of fresh personal bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of the Ld. MM by 10.7.2008."

18 . In the light of the above discussion, I do not find any infirmity in the impugned order passed by the Appellate Court giving direction to the appellant to deposit a sum of Rs. 4 lakhs before the learned MM within a period of 30 days and other directions given by the appellate court for the suspension of sentence of the appellant, which are well within his powers under Section 389 Cr.P.C.

19 . In view of the foregoing , the petitioner is directed to comply with the order dated 4.7.2008 of the learned ASJ within four weeks from the date of this order.

20 . There is no merit in the present petition, the same is hereby dismissed.

February 02, 2009
mg/rkr

KAILASH GAMBHIR, J.