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

+ **CRL.M.C. 2539/2013 & CrI. M.A. No. 9822/2013**

MUKESH BHATIA Petitioner

Through: Mr. Banamati Shukla, Advocate

versus

SANJEEV KUMAR GULATI & ANR. Respondents

Through: Mr. V.P. Singh & Mr. Vineet
Gandhi, Advocates for respondent
No.1

Mr. Mukesh Gupta, Additional
Public Prosecutor for respondent
No.2-State

+ **CRL.M.C. 2540/2013 & CrI. M.A. No. 9824/2013**

MUKESH BHATIA Petitioner

Through: Mr. Banamati Shukla, Advocate

versus

SANJEEV KUMAR GULATI & ANR. Respondents

Through: Mr. V.P. Singh & Mr. Vineet
Gandhi, Advocates for respondent
No.1

Mr. Mukesh Gupta, Additional
Public Prosecutor for respondent
No.2-State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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29.07.2013

In the above captioned two petitions, the statutory appeal of
petitioner against his conviction and sentence of fine for the offence of

CrI. M.C. No. 2539/2013

CrI. M.C. No. 2540/2013

Page 1

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under Section 138 of Negotiable Instruments Act, 1881 is pending before the Appellate Court, which is now coming up for hearing on 3rd August, 2013.

Vide impugned order of 14th August, 2013 in the above captioned two petitions, substantive sentence imposed upon petitioner has been suspended subject to deposit of fine. Since challenge to the impugned order in the above captioned two petitions is on identical ground, therefore, with the consent of both sides, these two petitions were taken up together for hearing and are being disposed of by this common order.

Learned counsel for petitioner vehemently contends that if petitioner is called upon to deposit the fine of ₹20,00,000/- (in CrI. M.C. No. 2539/2013) and ₹22,00,000/- (in CrI. M.C. No. 2540/2013), then the purpose of filing the appeal becomes infructuous.

This is disputed by respondents' counsel who submits that since the conviction suffered by petitioner is well merited, therefore, there is no justification to stay the order on sentence requiring deposit of fine, as the compensation out of said fine is not being released to the respondents during the pendency of the appeal.

Petitioner's counsel had placed reliance upon Apex Court decision in *S Haneef Vs. M. Shafath Ali Khan & Anr.* 2 (2007) BC 25 to contend that when an appeal is preferred then normally in cases like the instant one, operation of the impugned order directing payment of fine is stayed.

A bare perusal of decision in *S. Hanif (supra)* shows that it has not laid down as the legal proposition that if an appeal is filed, then there is automatic stay of sentence of fine. Rather, the substantive sentence in appeal is generally stayed upon deposit of fine. During the course of

hearing, it was vehemently urged by petitioner's counsel that since the service of statutory notice does not stand proved, therefore, it is a fit case for staying the deposit of fine, which is exorbitant. It was pointed out by learned counsel for respondents that respondent-complainant was not at all cross-examined on the aspect of non-service of statutory notice and infact, the statutory notice was served upon petitioner and the registered-AD card bears the signatures of petitioner. The crucial question of service or non-service of statutory notice is the aspect which would be gone into in appeal and is not required to be pre-judged at this stage. It is the discretion of the Court entertaining appeal whether to stay the deposit of fine or not.

In the facts and circumstances of this case, impugned order directing petitioner to deposit fine does not suffer from any palpable error. Accordingly, both these petitions are dismissed with direction to Appellate Court to expedite hearing in the pending appeals.

The above captioned petitions and the applications stand disposed of.


(SUNIL GAUR)
JUDGE

JULY 29, 2013

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