

GAHC010285312023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1360/2023

ARUP KUMAR SHARMA
S/O SRI INDRESWAR SHARMA
C/O SANGITA AGENCY,
R/O NO. 1 BORBIL, P.O. AND P.S. DIGBOI, DIST. TINSUKIA, ASSAM
PIN-786171

VERSUS

RAM LAKHAN GUPTA
S/O SRI BAIJNATH GUPTA
R/O MULIABARI
P.O. AND P.S. DIGBOI,
DIST. TINSUKIA, ASSAM,
PIN-786171

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT & ORDER (ORAL)

Date : 21-12-2023

Heard Mr. Bhaskar Dutta, learned Senior Counsel for the petitioner Sri

Arup Kumar Sharma.

2. The petitioner has filed this application under 482 of the *Code of Criminal Procedure* challenging the impugned order dated 21.11.2023 by the learned Additional Sessions Judge (FTC No. 1), Margherita in Criminal Appeal No. 7(4)/2023, whereby, while admitting the appeal, the learned Additional Sessions Judge (FTC No.1) held that the order for suspension of the operation of the sentence passed vide judgment and order dated 12.09.2023 by the learned Court of Sub-Divisional Magistrate (M), Margherita in NI Case No. 12/2018, shall be passed subject to deposit of minimum of 20% of the fine or compensation within 30 days from the date of the order.

3. The genesis of the case is that the complainant/respondent herein is the proprietor of Agbandha Agro Product and the petitioner operated a venture specializing in Britannia Distribution under the name and style of M/S Sangeeta Agency. In order to bolster the business of the petitioner an investment of Rs.20,00,000/- (Rupees Twenty Lacs) was sought from the respondent and the respondent provided a loan of Rs.20,00,000/- (Rupees Twenty Lacs) to the petitioner. Thereafter, a legally registered agreement was formally executed between the complainant/Respondent and the petitioner under various terms and conditions. The petitioner failed to fulfill his obligation in repaying the principal amount of Rs.20,00,000/- (Rupees Twenty Lacs) and the dividend of Rs.4,80,000/- (Four Lacs Eighty Thousand) to the respondent and then they again entered into a mutual agreement pertaining to the outstanding debt. Thereafter, for settlement of a part of the outstanding debt, the petitioner issued a cheque bearing No. 110931 for Rs.4,80,000/- (Four Lacs Eighty Thousand) dated 28.05.2018 to the proprietorship firm of the respondent. This cheque was presented, but was returned with an endorsement '*stopped by*

drawer’. Thereafter, a corresponding complaint case was initiated against the petitioner.

4. It is submitted on behalf of the petitioner that there is every possibility that the judgment and order of the trial Court dated 12.09.2023 in NI Case No. 12/2018 would be set aside, but the petitioner is in a predicament as he is directed to pay 20% of the compensation amount vide the impugned order passed by the learned Additional Sessions Judge. The case was initiated by the complainant/respondent against the petitioner who pleaded not guilty and contested the proceeding by examining one witness and exhibiting 8 documents. During the course of trial, the agreement dated 27.06.2016 executed between the petitioner and the respondent was exhibited as Exhibit 10, where the petitioner was required to pay the amount borrowed by the petitioner to the complainant in three installments i.e. in the month of July, 2016, October, 2016 and April, 2017 and accordingly, the petitioner issued four post-dated cheques.

5. It is stated that the learned trial Court however ignored the submission of the petitioner and sentenced the petitioner to undergo rigorous imprisonment for one year and to pay a compensation of Rs.9,00,000/- (Rupees Nine Lacs) under Section 138 of the Negotiable Instrument Act, 1881 (The NI Act, 1881, for short).

6. Aggrieved by the judgment and order dated 12.09.2023 passed by the learned trial Court, the petitioner preferred an appeal which was registered as Criminal Appeal No. 7(4)/2023 and the respondent filed a petition for issuing a direction to the petitioner to deposit the minimum of 20% of the fine or compensation amount, against which the petitioner prayed for waiver of payment of 20% of the said compensation amount. The learned Additional

Sessions Judge after hearing both the parties on the point of waiver of minimum of 20% of the fine or compensation awarded by the trial Court admitted the appeal vide order dated 21.11.2023 and held that the order of suspension of the operation of the sentence passed vide impugned judgment and order of the trial Court shall be subject to deposit of minimum 20% of the fine or compensation amount within thirty days.

7. It is averred that the learned appellate Court has failed to appreciate the scope and ambit of Section 148 of the NI Act, 1881 and the settled principle of law that the prayer for interim compensation is not absolute rule and in a given case the appellate Court is conferred with the power to dispense with the deposit of minimum of 20% of fine of compensation amount, if an exceptional case is made out. It is stated that the petitioner has a good case on merit.

8. It is averred that the compensation and the fine amount so far as Exhibit 10, more particularly, Annexure-1 of this petition is concerned, the post-dated cheques in question were handed over on 27.06.2016 for the month of July, 2016, October, 2016 and April, 2017 meaning thereby that last cheque was for the month of April, 2017 whereas the cheque in question is dated 28.05.2018, which the petitioner had never issued for any legally enforceable debt and the same is antedated.

9. It is submitted that the petitioner at this juncture comes under the purview of exceptional case which warrants grant of suspension of sentence without imposing the conditions of deposit of 20% of the fine or compensation amount. The petitioner has submitted that it was fairly submitted before the learned appellate Court to dispose of the appeal within three months by waiving the deposit of 20%.

10. The petitioner has prayed for waiver of 20% of the fine or compensation amount on the ground that at present he is suffering from tremendous financial hardship and not in a position to make the payment but it is submitted that the Clause 4 of the agreement marked as Annexure-1 also reflects that the petitioner has assured the respondent/complainant that the petitioner shall transfer a plot of land admeasuring 1 Katha appertaining to P.P. No. 122 and Dag No. 289 situated at Borbil No. 1, Mouza Makum, district Tinsukia to adjust the borrowed amount in case of failure of payment of the amount borrowed by the petitioner. It is also submitted on behalf of the petitioner that the petitioner shall not procrastinate the appeal and is willing to cooperate with the Court for speedy disposal of the appeal. The petitioner has also prayed for waiver of 20% of the compensation in compliance of the impugned order of the learned appellate Court passed under Section 148 of the NI Act, 1881.

11. The petitioner has also relied on the decision of Hon'ble the Supreme Court in *Jamboo Bhandari Vs. Madhya Pradesh State Industrial Development Corporation Limited and others reported in (2023) 10 SCC 446*, wherein it has been held that:

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the appellate court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when the appellate court considers the prayer under Section 389CrPC of an accused who has been convicted for offence under Section 138 NI Act, it is always open for the appellate court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the appellate court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.

8. *The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the courts to consider the said plea.*

9. *We disagree with the above submission. When an accused applies under Section 389CrPC for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the court has to consider whether the case falls in exception or not.*

10. *In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.*

11. *The learned counsel appearing for the appellants, at this stage, states that the appellants have deposited 20% of the compensation amount. However, this is the matter to be examined by the High Court.*

12. *In these circumstances, we set aside the impugned orders^{1,2} of the High Court and restore the revision petitions filed by the appellants before the High Court. We direct the parties to appear before the roster Bench of the High Court on 9-10-2023 in the morning to enable the High Court to fix a date for hearing of the revision petitions. As the contesting parties are before the Court, it will not be necessary for the High Court to issue a notice of the date fixed for hearing. The High Court, after hearing the parties, will consider whether 20% of the amount is already deposited or not. If the Court comes to the conclusion that 20% of the amount is not deposited, the Court will re-examine the revision petitions in the light of what we have observed in this judgment. Till the disposal of the restored revision petitions, the interim order [Jamboo Bhandari v. M.P. SIDC Ltd., 2023 SCC OnLine SC 1204] passed by this Court ordering suspension of sentence will continue to operate."*

12. I have given my thoughtful consideration to the submissions at the bar. The merits of this case are not brought to the fore. I have considered the submission that the petitioner is suffering from financial hardship. It is submitted that the petitioner is unable to pay minimum of 20% of the fine or compensation at this juncture. The petitioner is willing to actively co-operate for

the speedy disposal of the appeal. A pragmatic view is thus taken. Insistence on the payment of 20% of the fine or compensation amount may lead to procrastination of the case. I have also relied on the decision of the Hon'ble Supreme Court in *Jamboo Bhandari's case (supra)*. In the light of the decision of the Hon'ble Supreme Court in Jamboo Bhandari's case, the impugned order dated 21.11.2023 passed by the learned Additional Sessions Judge (FTC No. 1) at Margherita in Criminal Appeal No. 7(4)/2023 so far as directing the petitioner to deposit the minimum amount of 20% of the fine or compensation amount within thirty days from the date of the order is set aside. The payment of 20% of the fine or compensation is dispensed with. Appeal has already been admitted vide order dated 21.11.2023. The appellate Court is directed to make every endeavour to dispose of the appeal within three months from today.

In the terms of the above observations, criminal petition is disposed of.

JUDGE

Comparing Assistant