

Court No. - 79

Case :- CRIMINAL REVISION No. - 4558 of 2023

Revisionist :- Tarun Kanti Ghosh

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Sayujya Singh, Sr. Advocate

Counsel for Opposite Party :- G.A., Rakesh Kumar

Hon'ble Vipin Chandra Dixit, J.

Heard Sri Amit Saxena, learned Senior Advocate assisted by Sri Sayujya Singh, learned counsel for the revisionist, learned A.G.A. for the State and Sri Rakesh Kumar, learned counsel for opposite party no.2 and perused the record.

This criminal revision has been filed by the revisionist against the impugned order dated 21.06.2023 passed by Sessions Judge, Gautam Budh Nagar in Criminal Appeal No.77 of 2023 (Tarun Kanti Ghosh Versus Manoj Kumar Agarwal) to the extent by which the conditions to deposit 20% of the fine within 60 days as provided under Section 148 N.I. Act was imposed by the appellate court.

Brief facts of the case is that Criminal Appeal No.77 of 2023 has been filed by the revisionist against the judgement and order dated 23.05.2023 passed by the Presiding Officer, Additional Court No.2 Gautam Budh Nagar passed in Complaint Case No.3373 of 2022 by which the revisionist was convicted and sentenced for six months under Section 138 N.I. Act with fine of Rs. 80,00,000/-. The criminal appeal preferred by the revisionist was admitted by the Sessions Judge vide order dated 21.06.2023 and sentence was suspended subject to deposit 20% of fine.

It is submitted by learned Senior Advocate that conditions to deposit of 20% fine under Section 148 of N.I. Act is not absolute condition and lower appellate has committed gross illegality in directing the revisionist to deposit 20% of fine. He has placed reliance upon the judgment of Hon'ble Apex Court in the case of **Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Ltd. & Ors.** passed in Criminal Appeal No.(s). 2741 of 2023.

The relevant paragraph nos. 8, 9 and 10 are reproduced hereinunder:-

"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 disgrace with the above submission. When an accused applies under Section 389 of the Cr.P.C. 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 in absolute rule which does not accommodate any exception."

It is further submitted that even the appellant has not moved any application for exception, it was the duty of appellate court to consider that whether the case falls in exception or not. In the present case, no reason has been recorded by the lower appellate court while directing the revisionist to deposit 20% of fine.

On the other hand, learned counsel appearing on behalf of opposite party no.2 submits that lower appellate court has rightly directed the revisionist to deposit 20% of fine as provided under Section 148 of N.I. Act and there is no illegality in any manner.

Considered the rival submissions of learned counsel for both the parties and perused the record.

The appellate court has not recorded any finding that the case does not fall in exception while directing the revisionist to deposit 20% of fine.

In view of the judgment of the Hon'ble Apex Court in the case of **Jamboo Bhandari** (supra) the criminal revision is partly allowed and the order dated 21.06.2023 is set aside to the extent by which the lower appellate court had directed to deposit the amount of 20% of fine.

The appellate court is directed to consider the case of the revisionist as fresh after affording opportunity of hearing to the parties concerned that whether the revisionist is come within the ambit of exception or not within a period of two weeks from the date of production of certified copy of this order.

Order Date :- 16.10.2023

Imtiyaz