

GAHC010087362022



2024:GAU-AS:7654

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

Case No. : Crl.Rev.P./218/2022

RAJESH JAIN
SON OF LATE CHAND MALL JAIN
R/O SHIVAM NAGAR
CHAPAGURI ROAD, P.O. AND P.S. BONGAIGAON, DIST. BONGAIGAON,
ASSAM

VERSUS

MD. SHIRAJUL HOQUE AND ANR
SON OF LATE NUR MOHAMMAD
R/O VILL- BAIKHUNGAON
P.O. AND P.S. DHALIGAON,
DIST CHIRANG, BTAD, ASSAM, PIN-783380, MOBILE NO. 919435121801

2:THE STATE OF ASSAM
REP. BY THE PP
GOVT. OF ASSA

Advocate for the Petitioner : MR. D K KOTHARI, MS P BARUAH,MR. B DEKA

Advocate for the Respondent : PP, ASSAM, P. GHOSH,MR. A M AHMED

**BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

07-08-2024

Heard Mr. B. Deka, learned counsel for the petitioner and Mr. B. Sharma, learned Additional Public Prosecutor, Assam for the State respondent No.1. Also heard Mr. A. M. Ahmed, learned counsel for the respondent No.2.

2) The petitioner as a complainant filed a complaint case under section 138 of the Negotiable Instruments Act, 1881 before the Court of learned Chief Judicial Magistrate, Bongaigaon being NICR Case No. 34/2018 against the respondent No.1 contending inter alia that the respondent No.1 had borrowed an amount of Rs.11,80,000/- with an assurance to return the same within a year and a month. But the respondent No.1 failed to return the said amount. After repeated demand he issued a cheque bearing Cheque No. 005119 dated 26.06.2018 drawn on Axis Bank Limited, Bongaigaon Branch for an amount of Rs.11,80,000/-. But the said cheque of the respondent No.1, on being deposited by the petitioner in his account, got dishonored due to "insufficient funds". Thereafter, the petitioner on 06.07.2018 through his counsel sent a demand notice to the respondent No.1 with registered post demanding for payment of the cheque amount within 15 days of receipt of the said notice. In spite of receipt of said demand notice, as the respondent No.1 failed to repay the amount as demanded by the petitioner, he preferred the said proceeding under Section 138 of the N I Act, noted above.

3) After hearing the parties, the learned Chief Judicial Magistrate, Bongaigaon by Judgment and Order dated 10.01.2020 passed in NICR Case No. 34/2018 convicted the respondent No.1 under Section 138 of the N I Act, 1881 sentencing him to undergo simple imprisonment for three months and also sentenced him to pay the cheque amount of Rs. 11,80,000/- along with an amount of Rs. 1,30,000/- as compensation, in total, an amount of Rs.13,10,000/- to the complainant/petitioner herein, in default to undergo further simple imprisonment for one month, with the observation that pursuant to the order dated 14.11.2018 the amount of interim compensation of Rs.1,18,000/-, which was already paid by the accused/respondent No.1 on 22.01.2019 and received by the complainant/petitioner, will be part of the final compensation amount that shall be deducted from the final compensation amount. Further, by the said

Judgment dated 10.01.2020 passed in NICR Case No. 34/2018, learned Chief Judicial Magistrate, Bongaigaon clarified that amount remaining payable will be the cheque amount and further awarded compensation amount of Rs. 12,000/- to Rs. 11,92,000/-.

4) Against the said Judgment dated 10.01.2020 passed by learned Chief Judicial Magistrate, Bongaigaon in NICR Case No. 34/2018, the accused/respondent No.1 preferred an appeal under section 374 (3) of the Code of Criminal Procedure, 1973 as amended before the Court of learned Sessions Judge at Bongaigaon being Criminal Appeal Case No. 5/2020 praying to acquit him and to set aside the said Judgment and Order dated 10.01.2020, noted above and also prayed to allow him to remain on previous bail pending disposal of the said appeal.

5) Learned Sessions Judge, Bongaigaon on 20-02-2020 in said Criminal Appeal Case No. 5/2020 passed the following order: -

C. A. Case No. 5/2020

ORDER

20-02-2020

Seen the appeal against the Judgment and Order dated 10-01-2020 passed by Ld. C.J.M., Bongaigaon in NICR Case No. 34/2018 sentencing the accused/appellant to undergo S.I. of three months, along with a compensation of Rs. 13,10,000/- in default S.I. for one month for committing an offence u/S 138 of the N I ACT, 1881.

Seen the memo of appeal along with certified free copy of Judgment and Order passed by learned Lower Court.

Ld.Counsel for respondent is also present.

Heard Ld.Counsel for the appellant.

Case record reveals that appeal was filed in time.

The grounds mentioned in the memo of appeal are good grounds for appeal. Hence, appeal is admitted for hearing.

Appellant is directed to pay 20% of fine amount awarded by Court below within 60 days from the date of admission of appeal.

Call for the lower court record.

Fixing 27-02-2020 for hearing and LCR.

As dictated

Sessions Judge
Bongaigaon
20/02/2020

6) In said Criminal Appeal No. 5/2020 its respondent, i.e., the petitioner herein on 02-02-2021

filed Petition No. 181/2021 before the learned Sessions Judge, Bongaigaon stating that the said appeal of the appellant/respondent No.1 herein was admitted on 20.02.2020 on condition that the appellant will pay/deposit 20% of the awarded compensation amount in favor of the respondent within 60 days. But, the said appellant did not deposit the said 20% compensation till date. Hence, by the same petition, the petitioner prayed before the learned Sessions Judge, Bongaigaon that, due to non-compliance of the order dated 20.02.2020 while admitting the said appeal by the Hon'ble Court, the appeal may be dismissed to meet the ends of Justice.

7) After hearing the parties, the learned Sessions Judge, Bongaigaon by order dated 15.03.2022 rejected the said Petition No. 181/2021 of the present petitioner with the following order: -

C. A. Case No. 5/2020

ORDER

15-03-2022

Both the parties are represented by their learned counsels.

Seen petition No. 181/2021 filed by the respondent. It is stated that the appeal was admitted on condition that the appellant will deposit 20% of the awarded compensation amount in favour of the petitioner within 60 days but the appellant has not deposited the said 20% compensation till date and prays to dismiss the appeal.

Learned counsel for the petitioner has argued that as per direction of the Court appellant did not deposit 20% of cheque amount till today and as such, prays to vacate the order of stay. In support of his argumenthe relied on the following decisions:

1) Hon'ble Supreme Court of India reported in 2020 STPL 2363, Surinder Singh Deswal @ Col. S.S. Deswal and other -Vs- Virender Gandhi and another.

2) Hon'ble High Court at Jodhpur in case No. S B Criminal Misc (Pet) No. 189/2022, G. K. Construction through its owner Govind Kataria -Vs- Balaji Makan Samagri Stores through its Proprietor Mallaram.

3) Hon'ble Delhi High Court in Crl. M.C. 2605/19 and Crl. M.A. 11307/19, Crl. M.A. 10436/19 in the case of Birendra Shukla -Vs- State, and Anr. On 28th may, 2019.

I have gone through the aforesaid judgments. The deposit of 20% of cheque amount was not the condition precedent of vacating the order of suspension of stay. There is no provision to dismiss the appeal if the said amount is not paid within 60 days. Hence, I do not find merit in the petition and same is accordingly rejected.

Fixing 01.04.2022 for hearing.

As dictated
Sessions Judge
Bongaigaon
15/03/2022

8) Aggrieved with the said order dated 15.03.2022 passed by the learned Sessions Judge, Bongaigaon rejecting his said Petition No. 181/2021 in said CA Case No. 05/2020, the petitioner/claimant has filed this Criminal Revision Petition No. 218/2022 under Section 401 read with Sections 399 and 482 of the CrPC, praying amongst others to set aside and quash the impugned order dated 15.03.2022 of the learned Sessions Judge, Bongaigaon in Criminal Appeal No. 5/2020 and further to direct the appellant/respondent herein to deposit 20% of the fine/compensation amount awarded by the learned appellate Court.

9) In this petition, the petitioner has also prayed to allow him to execute warrant in NICR Case No. 34/2018 for conviction of the respondent No.1 under Section 138 of the N I Act, 1881 and for his subsequent failure to deposit 20% of the fine/compensation amount awarded by the learned Appellate Court.

10) The Negotiable Instruments Act, 1881 was amended in the year 2018 by the Negotiable Instruments (Amendment) Act, 2018 and a new Section 148 was inserted after Section 147 of said 1881 Act that came into force with effect from 01.09.2018 that relates to Power of Appellate Court to order payment pending appeal against conviction under Section 138 of the N I Act, 1881 that stipulates as follows: -

148. Power of Appellate Court to order payment pending appeal against conviction. —

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

11) The Hon'ble Supreme Court in the case of *Surinder Singh Deswal -Vs- Virender Gandhi*,

reported in (2019) 11 SCC 341 have considered the Statement of Objects and Reasons of the amendment in Section 148 of the NI Act, 1881 as amended by way of Amendment Act 20 of 2018, which are as follows: -

“The Statement of Objects and Reasons of the amendment in Section 148 of the NI Act :-

“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 realise the value of the cheque. Such delays compromise the sanctity of cheque transactions.

It is proposed to amend the Negotiable Instruments Act, 1881 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.”

12) Considering the provisions of amended Section 148 of the N I Act and the Statement of Objects and Reasons of said amended Section 148 of the N I Act, their Lordships in the case of *Surinder Singh Deswal* (supra) have held that —

“8. considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, though it is true that in the amended Section 148 of the NI Act, the word used is “may”, it is generally to be construed as a “rule” or “shall” and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore, amended Section 148 of the NI Act confers power upon the appellate court to pass an order pending appeal to direct the appellant-accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the appellant-accused under Section 389 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the NI Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 of the NI Act is purposively

interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the NI Act, but also Section 138 of the NI Act. The Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonour of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, Parliament has thought it fit to amend Section 148 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the NI Act and also Section 138 of the NI Act.”

13) After discussing the decision in the case of *Surinder Singh Deswal* (supra) and the Statement of Objects and Reasons of the amendment in Section 148 of the NI Act, 1881, their Lordships in the case of *Jamboo Bhandari -Vs- M.P. SIDC Ltd.*, reported in (2023) 10 SCC 446 have 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.”

14) Perused the records of CA Case No. 05/2020 pending before the Court of learned Sessions Judge, Bongaigaon as well as the records of NICR Case No. 34/2018 that were called for by order dated 25.05.2023.

15) The learned Chief Judicial Magistrate, Bongaigaon by Judgment and Order dated 10.01.2020 passed in NICR Case No. 34/2018 convicted and sentenced the accused/respondent No.1 under Section 138 of the N I Act, 1881, directing him to pay the cheque amount with compensation against which the said accused, i.e., respondent No.1 herein as appellant filed the said CA Case No. 05/2020.

16) In his Memo of Appeal filed in said CA Case No. 05/2020, amongst others, the said accused/appellant/respondent No.1 prayed before the appellate Court to acquit him by setting aside the said Judgment and Order dated 10.01.2020 passed by learned Chief Judicial Magistrate, Bongaigaon in NICR Case No. 34/2018 and to allow him to remain on previous bail pending disposal of his said appeal.

17) Learned Sessions Judge, Bongaigaon by order dated 20-02-2020 admitted the said appeal

CA Case No. 05/2020 of the accused/appellant/respondent No.1 for hearing, directing him to pay 20% of fine amount awarded by Court below within 60 days from the date of admission of appeal.

18) It is also seen from the records of the case that in said NICR Case No. 34/2018 preferred by the petitioner as compliment, the learned Additional Chief Judicial Magistrate, Bongaigaon by order dated 14-11-2018 granted bail to the accused/appellant/respondent No.1. When the learned Chief Judicial Magistrate, Bongaigaon in said NICR Case No. 34/2018 on 10.01.2020 convicted and sentenced him under Section 138 of the N I Act, 1881 and also directed him to pay the cheque amount with compensation, on his prayer, the said learned Magistrate by a separate order dated 10.01.2020 passed in said NICR Case No. 34/2018 allowed the accused/respondent No.1 to remain on previous bail as he intended to prefer appeal against the said Judgment and Order dated 10.01.2020 passed in NICR Case No. 34/2018, fixing the matter on 11.02.2020. On 11.02.2020 the accused/respondent No.1 placed before the learned Chief Judicial Magistrate, Bongaigaon that C A Case No. 05/2020 had already been preferred and by order dated 06.02.2020 the learned Sessions Judge, Bongaigaon fixed the same on 20.02.2020 for its admission hearing. As such, the learned Chief Judicial Magistrate, Bongaigaon by order dated 11.02.2020 allowed the accused/respondent No.1 to remain on previous bail fixing the matter on 02.03.2020.

19) As in the meanwhile the learned Sessions Judge, Bongaigaon by order dated 20.02.2020 admitted the said C A Case No. 05/2020 for hearing, called for the records of NICR Case No. 34/2018 and fixed the matter on 27.02.2020, the learned Chief Judicial Magistrate, Bongaigaon by order dated 26.02.2020 transmitted the records of said NICR Case No. 34/2018 to the Court of learned Sessions Judge, Bongaigaon as called for. In that manner the accused/appellant/respondent No.1 remained on previous bail.

20) It is not the pleaded case of the accused/appellant/respondent No.1 before the appellate Court of learned Sessions Judge, Bongaigaon in said C A Case No. 05/2020 that an exception may be made in said appeal and the requirement of deposit of minimum 20% of the amount be dispensed with. As noted above, the learned Sessions Judge, Bongaigaon by order dated 20.02.2020 admitted the said appeal C A Case No. 05/2020 of the accused/appellant/respondent No.1 for hearing, directing him to pay 20% of fine amount awarded by the Court below within 60 days from the date of admission of appeal, which the said accused/appellant/respondent No.1 did

not deposit.

21) As such, the present petitioner on 02.02.2021 filed the Petition No.181/2021 before the learned Sessions Judge, Bongaigaon in said C A Case No. 05/2020 stating that the said appeal of the accused/appellant/respondent No.1 was admitted on 20.02.2020 on condition that he shall pay 20% of fine amount awarded by Court of learned Chief Judicial Magistrate, Bongaigaon by order dated 10.01.2020 passed in said NICR Case No. 34/2018 within 60 days from the date of admission of the appeal, i.e., w.e.f. 20.02.2020, which the said accused/appellant/respondent No.1 have not deposited and therefore, the complainant/petitioner by the said petition prayed before the learned Sessions Judge, Bongaigaon to dismiss the said appeal to meet the ends of Justice.

22) On Perusal of the order dated 20.02.2020 passed by the learned Sessions Judge, Bongaigaon in said C A Case No. 05/2020, it can be seen that the learned first Appellate Court by the order dated 20.02.2020 found that the grounds mentioned in the memo of the appeal being good grounds for appeal and accordingly, admitted the said C A Case No. 05/2020 for hearing.

23) Further, by the said order dated 20.02.2020 learned First Appellate Court directed the accused appellant/respondent No. 1 to pay 20% of the fine amount awarded by the Court of learned Chief Judicial Magistrate, Bongaigaon on 10.01.2020 in the NICR Case No. 34/2018 within 60 days from the date of admission of the said appeal in conformity with the provisions of Section 148 of the N I Act, 1881 as amended, since the said First Appellate Court was aware of the fact that the said C A Case No. 05/2020 of the accused appellant/respondent No. 1 was against the Judgment and Order of conviction and Sentence passed by the learned Chief Judicial Magistrate, Bongaigaon on 10.01.2020 in the NICR Case No. 34/2018 convicting the said accused appellant under Section 138 of the N I Act, further directing him to pay the cheque amount with compensation.

24) For the reasons above, this Court is of the opinion that the finding of the first Appellate Court, i.e., learned Sessions Judge, Bongaigaon dated 15.03.2022 in said C A Case No. 05/2020 holding that there is no provision to dismiss the appeal if the amount of 20% of fine amount awarded by the Court below is not paid within 60 days from the date of admission of appeal and in rejecting the Petition No. 181/2021 of the petitioner does not call for any interference. For the reasons above, to that extent the prayer of the petitioner made in this petition stands dismissed.

25) In his said Petition No. 181/2021 filed in C A Case No. 5/2020 before the learned Sessions Judge, Bongaigaon the petitioner neither prayed for execution of warrant in NICR Case No. 34/2018 for conviction of the accused appellant/respondent No.1 under Section 138 of the N I Act nor for his rejection of his bail.

26) However, considering the decisions of the Hon'ble Supreme Court in the cases of *Surinder Singh Deswal* (supra) and *Jamboo Bhandari* (supra) as well as the Statement of Objects and Reasons of amendment in Section 148 of the NI Act, and further, keeping in mind that due to easy filing of the appeals, due to delay tactics by the unscrupulous drawers of the dishonoured cheques and obtaining stay in the proceedings, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the Court proceedings to realise the value of the cheque and that such delay compromises with the sanctity of the cheque transactions for which Section 148 of the NI Act has been amended, it is made clear that in the event the petitioner files any application for cancellation of bail of the accused appellant/respondent No. 1 herein before the learned Sessions Judge, Bongaigaon in C A Case No. 5/2020 for not depositing the 20% of fine amount awarded by Court of learned Chief Judicial Magistrate, Bongaigaon by order dated 10.01.2020 passed in said NICR Case No. 34/2018 within 60 days from the date of admission of the appeal, i.e., w.e.f. 20.02.2020 in terms of the Order dated 20.02.2020 passed by the learned first Appellate Court, i.e., learned Sessions Judge, Bongaigaon in C A Case No. 5/2020 thereby violating the provisions of Section 148 of the N I Act, then the said first Appellate Court shall consider the same in accordance with law.

27) Accordingly, this Revision Petition stands disposed of.

JUDGE

Comparing Assistant