

GAHC010285332023



2024:GAU-AS:10329

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

Case No. : Crl.Pet./1359/2023

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. SAILENDRA DEKA, MS L RONGPIPI, MR JITENDRA DAS

Advocate for the Respondent : MR. B D KONWAR SR. ADV., MR. R SALOI, MR J SINGH, MR H AGARWAL

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGEMENT AND ORDER (CAV)

Date : 22-10-2024

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

B.D. Konwar, learned Senior Counsel for the respondent.

2. The petitioner in this case is Sri Arup Kumar Sharma, who has filed an application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC for short) challenging the order dated 21.11.2023 passed by the learned Additional Sessional Judge (FTC no. 1), Marghertia in Criminal Appeal No. 6(4)/2023 observing that the operation of the sentence passed by the Trial Court shall be allowed subject to deposit of minimum of 20% of the fine or compensation amount to be paid by the petitioner or to pass any order which this Court deems appropriate.

3. Vide order dated 12.09.2023, the learned Sub-Divisional Judicial Magistrate (M), Margherita [SDJM (M) for short] in NI Case No. 11/2018 convicted the petitioner/accused under Section 138 of the Negotiable Instruments Act, 1881 (NI Act for short) to undergo rigorous imprisonment for one year and to pay a compensation of Rs.40,00,000/- (Rupees Forty Lacs) with default stipulation. The petitioner then preferred a Criminal Appeal No. 6(4)/2023 pending in the Court of Additional Sessions Judge (FTC No. 1), Marghertia.

4. The genesis of the case is that an agreement was executed by both the parties i.e. the petitioner and respondent Sri Ram Lakhan Gupta in order to bolster the business of the petitioner through an investment of Rs.20,00,000/-

(Rupees Twenty Lacs).The petitioner then borrowed an amount of Rs.20,00,000/-(Rupees Twenty Lacs) from the respondent. The petitioner however failed to repay the principal amount and the dividend of Rs.4,80,000/- (Rupees Four Lacs Eighty Thousand) to the respondent and again a mutual agreement was executed pertaining to the outstanding debt. In order to settle the outstanding debt, petitioner issued a cheque bearing No. 110930 for Rs.20,00,000/- (Rupees Twenty Lacs) dated 18.05.2018 to the proprietorship firm of respondent i.e. 'Agbandha Agro Produce'. When the cheque was presented by the respondent, the same was returned with an endorsement stating 'payment stopped by drawer'. Thereafter, a legal notice was issued and the instant case i.e. NI Case No. 11/2018 was brought up against the petitioner, who contested the proceeding and pleaded not guilty. Witnesses were examined and documents were exhibited.

5. It is further submitted that according to the written agreement dated 27.06.2016/Exhibit-9, the petitioner was to pay the borrowed amount to the respondent in three installments i.e. in the month of July, 2016, October, 2016 and April, 2017. However, the learned Trial Court held the petitioner guilty and was pleased to sentence him to undergo rigorous imprisonment for one year and to pay a compensation of Rs.40,00,000/- (Rupees Forty Lacs) with default stipulation. Being aggrieved by the aforesaid judgment and order, the petitioner

preferred an appeal and prayed for suspension of the operation of the aforementioned sentence. The learned Appellate Court vide order dated 21.11.2023 in Criminal Appeal No. 6(4)/2023 passed an order that the sentence shall be stayed subject to the condition that the petitioner deposits minimum of 20% of the fine amount within 30 (Thirty) days.

6. It is contended that the learned Appellate Court has failed to appreciate the scope and ambit of Section 148 of the NI Act that the settled principle of law 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 20% of the fine amount. It is submitted that the petitioner has a good case on merits and there is every possibility that he will succeed in appeal and therefore, the petitioner has prayed for waiver of depositing the fine or compensation amount.

7. It is submitted that as per Exhibit-9, the postdated cheques were handed over on 27.06.2016 for the months of July, 2016, October, 2016 and April, 2017, meaning thereby the last cheque was for the month of April, 2017 whereas the cheque in question is dated 28.05.2018 and this cheque was never issued for any legally enforceable debt and the same is antedated. It is further submitted that the learned Trial Court has failed to appreciate that the cheque has been dishonoured due to insufficiency of fund but the same was dishonoured as

payment was stopped by the drawer.

8. It is submitted that the reasons ascribed by the learned Appellate Court for rejecting the waiver of 20% of compensation amount is perverse, moreso, in view of the fact that during the course of hearing, learned counsel for the petitioner highlighted the infirmity of the judgment passed by the learned Trial Court and also highlighted the terms and conditions of Exhibit-9. The point raised by the petitioner herein comes under the purview of exceptional case which warrants grant of suspension of sentence without imposing the condition to deposit 20% of the compensation amount.

9. Petitioner has prayed for waiver of the fine or compensation on the ground that at present the petitioner is in financial distress and not in a position to make payments.

10. Learned Senior Counsel for the respondent has raised serious objection. It is submitted that while deciding the prayer made under Section 143-A/148 of the Act, the Court must record brief reasons indicating consideration of all the relevant factors.

11. In reply, learned Senior Counsel for the petitioner has submitted that the Court cannot delve into the merits of this case.

12. I have scrutinized the impugned order dated 21.11.2023 passed by the

learned Appellate Court and I have also scrutinized the Trial Court Record.

13. The relevant part of the order is reproduced herein below :-

“I have considered rival submissions. On going through the aforesaid decision, it transpires that in para 6 the Hon'ble Supreme Court observed as follows: What is held by this court is that a purposive interpretation should be made of section 148 of the N.I Act. Hence, normally 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.

In para no.7, it was further held that 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 or compensation amount.

Now, it appears that while advancing argument for waiver of deposit of minimum of 20% of the fine or compensation, the Ld. Advocate for the appellant entered deep into the merits of the impugned judgment and order, while the appeal is pending on the threshold for consideration of its admission.

I am of the considered view that at this stage, instead of delving deep upon the merit of the appeal, which exercise is required to be under taken at later stage after initial admission of the appeal, the appellant ought to have brought the extraneous special and exceptional circumstances on record to justify waiver of deposit of minimum of 20% of the fine or compensation and for suspension of operation of the sentence passed vide Impugned judgment and order. However, since no such case of exceptional nature has been made out, I am constrained to hold that the plea for waiver of fine or compensation as above is not tenable and hence discarded. Here, I may hasten to add that, if section 148 is regarded to be couched in such terms and to the effect that the court may do away with the requirement of deposit of minimum of 20% of the fine or compensation, then the court would render defunct the very legislative

intent behind such deposit pendente lite appeal.

Accordingly, petition filed by the respondent for directing the appellant to deposit of minimum of 20% of the fine of compensation, is allowed.”

14. It appears that the petitioner has not submitted before the learned Appellate Court that he was in financial distress. However, the petitioner has laid stress that he is in financial distress at this stage and he is unable to pay 20% of the compensation amount. It is further submitted that the order of the Appellate Court was very harsh *inasmuch* as the petitioner has borrowed an amount of Rs.20,00,000/- (Rupees Twenty Lacs) and the antedated cheque was for Rs.20,00,000/- (Rupees Twenty Lacs) but he was sentenced to pay Rs.40,00,000/- (Rupees Forty Lacs) and under financial constraints, he is directed to pay 20% of Rs.40,00,000/- (Rupees Forty Lacs)

15. It is further submitted on behalf of the petitioner that the petitioner has a good case of acquittal. The petitioner is also aggrieved by the harsh sentence imposed upon him by the learned Trial Court. It has been held by the Hon'ble Supreme Court in Rakesh Ranjan Shrivastava Vs. State of Jharkhand and Another reported in (2024) 4 SCC 419 that :

“20. Even sub-section (1) of Section 148 uses the word “may”. In Surinder Singh Deswal v. Virender Gandhi, this Court, after considering the provisions of Section

148 held that the word “may” used therein will have to be generally construed as “rule” or “shall”. It was further observed that when the appellate court decides not to direct the deposit by the accused, it must record the reasons. After considering the said decision in Surinder Singh Deswal, this Court in Jamboo Bhandari v. M.P. SIDC Ltd., in para 6, held thus : (SCC p. 449)

“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.” (emphasis supplied)

16. A scrutiny of the Trial Court Record reveals that no separate petition ascribing reasons of financial distress was filed by the petitioner for waiver of sentence of deposit of 20% of fine or compensation amount. The respondent had filed a petition for interim compensation and the petitioner had submitted a synopsis. The impugned order was passed on the submission during admission of the appeal memo filed by the petitioner before the Appellate Court. Thus, no extraneous special and exceptional circumstances were placed before the learned Appellate Court for waiver of the minimum deposit of 20% of the

compensation amount.

17. It cannot be held that no reasons were attributed by the learned Additional Sessions Judge while passing the order, dismissing the prayer of waiver. However, it appears to be a fit case to interfere with the impugned order passed by the learned Additional Sessions Judge (FTC No. 1), Marghertia.

18. I have considered the submissions that the petitioner at present is in financial distress. The petitioner has submitted that he is willing to actively participate with the appeal. For the interest of justice, I deem it appropriate to set aside the order impugned by the petitioner. Thereby, the order dated 21.11.2023 passed by the learned Additional Sessions Judge (FTC No. 1), Marghertia in Criminal Appeal No. 6(4)/2023 directing the petitioner to deposit a minimum of 20% of the fine or compensation amount, is set aside. The learned Appellate Court is directed not to impose the condition to deposit 20% of the compensation amount as pre-requisite to consider the prayer for suspension of operation of the sentence and the prayer for suspension of the operation of impugned sentence may be considered by the learned Appellate Court on the merits of the case.

19. The petitioner is directed to cooperate with the appeal.

20. In terms of the above observation, this Criminal Petition stands disposed

of.

21. No order as to costs.

JUDGE

Comparing Assistant