

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. Nos.21576, 21577 & 21702 of 2016

D.Thamburaj

.. Petitioner in all the Crl.OPs.

Vs

J.Inderchand Nahar

..Respondent in all the Crl.OPs.

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C., to modify the condition to deposit the sum of Rs.18,75,000/-, 18,75,000/- and Rs.12,50,000/- imposed in Crl.M.P.Nos.2607, 2606 and 2672 of 2016 in C.A.Nos.39, 38 & 42 of 2016 by the Learned Principal Sessions Judge, Chengalpet by the orders dated 15.09.2016, 15.09.2016 and 20.09.2016 respectively.

For petitioner : Mr.Sunder Mohan
in all the Crl.OPs.

COMMON ORDER

These petitions have been filed to modify the condition to deposit Rs.18,75,000/-, Rs.18,75,000/- and Rs.12,50,000/- imposed in Crl.M.P.Nos.2607, 2606 and 2672 of 2016 in C.A.Nos.39, 38 and 42 of 2016 by the Principal Sessions Judge, Chengalpet by orders dated 15.09.2016, 15.09.2016 and 20.09.2016 respectively.

2. Heard the learned counsel for the petitioner.

3. By judgment dated 23.08.2016, in C.C.Nos.869, 868 and 867 of 2012, the petitioner was convicted u/s 138 of the Negotiable Instruments Act by the Judicial Magistrate, Alandur and sentenced to undergo one year simple imprisonment and also pay a compensation of Rs.2 crores being the cheque amounts [C.C. No.869 of 2012 - Rs.75 lakhs, C.C. No.868 of 2012 - Rs.75 lakhs and C.C. No.867 of 2012 - Rs.50 lakhs).

4. Aggrieved by the conviction and sentence, the petitioner has preferred Crl.A.Nos.39, 38 and 42 of 2016 and prayed for suspension of sentence in Crl.M.P.Nos.2607, 2606 and 2672 of 2016 before the Principal Sessions Judge, Kancheepuram. The Principal Sessions Judge, Kancheepuram by orders dated 15.09.2016, 15.09.2016 and 20.09.2016 in Crl.M.P.Nos.2607, 2606 and 2672 of 2016 respectively suspended the substantive sentence of imprisonment, but directed the petitioner to deposit Rs.50 lakhs [Rs.18,75,000 + Rs.18,75,000 + Rs.12,50,000] as against Rs. 2 crores ordered by the trial Court and on further directions, that the trial Court should deposit the amount in a Nationalised Bank, pending disposal of the appeals. Aggrieved by the said orders, the petitioner is before this Court.

5. Learned counsel for the petitioner placed strong reliance on the judgment of the Supreme Court in **Dilip S.Dahanukar v. Kotak Mahindra Co.Ltd. and another [(2007) 6 SCC 528]**, wherein the Supreme Court has held that the principle enshrined in Section 357(2) Cr.P.C. can be telescoped into Section 357(3) Cr.P.C., whereby the accused need not have to pay the compensation pending

disposal of the appeal. Learned counsel also relied on paragraphs 35, 38, 50 and 52 of the said judgment:

"35. It is, therefore, seen that consideration for payment of compensation is somewhat different from payment of fine. It is, to the said extent applied differently. As would be noticed a little later, it is necessary to probe into the capacity of the accused to pay the amount and the purpose for which it is directed to be paid.

38. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefor in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub- Section (3) of [Section 357](#) does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge.

50. This Court in an appropriate case may have to consider as to whether in economic offence like [Negotiable Instruments Act](#), the Courts should at all invoke sub-Section (3) of [Section 357](#) of the Code, when the purpose can be achieved by taking recourse to substantive provision of [Section 138](#) of the Act read with [Section 357\(1\)](#) thereof. We, however, do not intend to lay down any law in this behalf, as at present advised, as we are not concerned herein with such a situation.

52. If realization of an amount of compensation payable to a victim as envisaged under Clause (d) of sub-Section (1) of [Section 357](#) is to be stayed under sub-Section (2) thereof, there is no reason why the amount of compensation payable in terms of sub-Section (3) shall not receive the same treatment.

56. An order may not be passed which the appellant cannot comply with resulting him being sent to prison. Appellate Court, in such cases, must make an endeavour to strike a balance. [Section 421](#) of the Code of the Criminal Procedure may take recourse to, but therefor he cannot be remanded to custody.

60. In a case of this nature, the Court must invoke the doctrine of purposive construction. Sub-Section (2) of [Section 357](#) was enacted for a definite purpose. It must be given its full effect."

Relying on the aforesaid passages, learned counsel contended that the sum of Rs.50,00,000/- that has been directed by the appellate Court is indeed an onerous condition and hence, warrants interference of this Court.

6. This Court gave its anxious consideration to the submissions made by the learned counsel for the petitioner.

7. Learned counsel also relied upon the judgment of this Court in **C.Murugesan v. Prabakaran and another [2011 (2) MWN (Cr.) DCC 41]**, wherein this Court had interfered with the order of the appellate Court directing the accused therein to deposit half the cheque amount as compensation.

8. There is no quarrel with the proposition of law laid down in the judgment of the Supreme Court referred to above. In the said judgment, the Supreme Court has stated that the principles of Section 357(2) Cr.P.C. would equally apply to an order under Section 357(3) Cr.P.C., inasmuch as the accused need not be directed to pay the amount to the victim, pending disposal of the appeal.

9. In this case, the appellate Court has not directed payment of Rs.50,00,000/- to the complainant, whereas, the appellate Court has directed the accused to deposit the said sum before the trial Court with a further direction to the trial Court to re-deposit the amount in a Nationalised Bank, so that it accrues interest, pending disposal of the appeals.

10. As regards the contention that the amount is onerous, it may be necessary to look into the brief facts of the case. It is seen that the accused sold the property worth Rs.4 crores to the complainant and later the complainant came to know that he did not have title to the property, since one of the owners Geetha had died seven years prior to the sale. Therefore, the complainant wanted the accused to cancel the sale deed and refund the money. The accused cancelled the sale deed and towards the refund of money, had given the impugned cheques for Rs.2 crores, which are the subject matters of the three cases against him. The complaints were filed in the year 2012 and the trial Court verdict came only in 2016. The accused has managed to prolong the case for four years. The Supreme Court in **Dilip S.Dahanukar case** (cited supra) has clearly held as follows in paragraph 55:

"55. But when a direction is issued for payment of compensation, having regard to Sub-Section (2) of [Section 357](#) of the Code, the application thereof should ordinarily be directed to be stayed. It will, therefore, be for the Court to stay the operation of that part of the judgment whereby and whereunder compensation has been directed to be paid, which would necessarily mean that some conditions therefor may also be imposed. A fortiori a part of the amount of compensation may be directed to be deposited, but the same must be a reasonable amount."

11. The learned counsel also submitted that in this case, the Supreme Court had directed the accused to deposit Rs.1 lakh, whereas the trial Court had directed the accused therein to deposit Rs.15 lakhs. In the said judgment, the Supreme Court has stated that the amount of compensation to be deposited must be a reasonable amount. The reasonableness of the amount is different depending upon the facts and circumstances of each case and there cannot be a thumb rule to guide such exercise of discretion by the Courts below. In this case, the Court has

directed the accused to deposit only Rs.50,00,000/- as against the total cheque amount of Rs.2 crores.

12. In **G.G.Jayaraman and others v. V.V.S.Manian and another [2008 (1) MWN (Cr.) DCC 165]**, a learned single Judge of this Court had gone into this aspect in detail by considering the various judgments of the Supreme Court as well, including the judgment in **Dilip S.Dahanukar case** (cited supra) and has held that, calling upon the accused to deposit 1/4th of the compensation amount cannot be said to be harsh. I am in complete agreement with the said observation. That apart, when the appellate Court has exercised its discretionary power, the same should not be interfered with, unless it is found to be perverse.

13. In the considered opinion of this Court, in the facts and circumstances of the case at hand, the condition imposed by the appellate Court to deposit Rs.50,00,000/- is not too onerous, warranting interference by this Court. However, this Court is of the opinion that the amount be reduced to Rs.40 lakhs in the aggregate.

14. In the result, **Crl.O.P.Nos.21576 and 21577 of 2016** are dismissed and the order passed by the appellate Court in **Crl.M.P.Nos.2607 and 2606 of 2016** are confirmed.

15. As regards **Crl.O.P.No.21702 of 2016**, the order of the appellate Court in **Crl.M.P.No.2672 of 2016** in **C.A.No.42 of 2016** directing the accused to

deposit Rs.12,50,000/- is reduced to Rs.2,50,000/- and the said criminal original petition is ordered accordingly. One month time is extended from the date of receipt of a copy of this order to deposit the total sum of Rs.40,00,000/- before the Judicial Magistrate, Alandur and on such deposit, the Judicial Magistrate Alandur is directed to re-deposit the amount in any Nationalised Bank in Fixed Deposit account until further orders of the appellate Court.

29.09.2016

gms

To

1.The Principal Sessions Judge,
Chengalpet.

2. The Judicial Magistrate
Alandur

3. The Public Prosecutor
High Court, Madras.

P.N.PRAKASH, J.

gms

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