HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.15181 OF 2016

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to set aside the order, dated 22.09.2016, passed in Crl.M.P. No.1454 of 2016 in Criminal Appeal No.763 of 2016 in C.C. No.180 of 2015 on the file of the learned Special Judge for trial of offences under SCs and STs (POA) Act - cum - VI Additional Metropolitan Sessions Judge, Secunderabad.

2. In this petition, personal notice on respondent No.2 was ordered on 26.10.2016, the learned counsel was filed proof of service vide memo USR No.7481 of 2016 along with the Track Consignment extract showing that the item was delivered at Vidyanagar on 07.11.2016, but it appears no appearance was entered on behalf of respondent No.2.

3. A few facts are necessary for disposal of the present petition.

i) The learned XI Special Magistrate, Secunderabad at Hyderabad while convicting the petitioners in C.C. No.180 of 2015 (Old C.C. No.743 of 2015) on 11.08.2016 under Section 255 (2)of the Code for the offence punishable under Section 138 of the Negotiable Instruments Act,1881, sentenced to pay a fine of Rs.40,50,000/-, and as the amount of Rs.17,80,000/- was already paid, the learned

Magistrate directed the petitioners to pay the balance amount of Rs.22,70,000/- within one month, and on such payment, a sum of Rs.22,50,000/- shall be paid to the complainant, who is respondent No.2 herein, as compensation under Section 357 (1) (b) of the Code and in default of payment of fine, the accused shall undergo simple imprisonment for a period of eleven (11) months.

4. The petitioners herein, aggrieved over the conviction and sentence of payment of fine, preferred Criminal Appeal No.763 of 2016 before the learned Special Judge for trial of Offences under SCs and STs (POA) Act - cum - VI Additional Metropolitan Sessions Judge, Secunderabad. They have also filed Criminal M.P. No.1454 of 2016 under Section 357 of the Code requesting to suspend the payment of fine amount of Rs.22,50,000/-. The learned Sessions Judge having heard the arguments, modified the condition, by his order, dated 22.09.2016, directing the petitioners herein to deposit 1/4th of the fine amount as awarded by the learned Magistrate payable by the petitioners within two months from the date of the said order. The same is now under challenge.

5. Heard Sri D. Madhava Rao, learned counsel for the petitioners, and the learned Additional Public Prosecutor appearing for the State of Telangana.

6. The learned counsel would submit that such an order passed by the trial Court is erroneous in view of the provisions of Section 357 (3) of the Code, and since it is unsustainable in view of the settled proposition of law declared by the Hon'ble Supreme Court in **R. Vijayan v. Baby and another**[1], to set aside the same.

7. To decide the controversy, it would be apt to extract the operative portion of the judgment rendered by the learned Special Magistrate contained in paragraph No.29, which reads thus:

> "29. In the result, the accused A1 represented by A2, and A2 & A3 are found guilty of the offence punishable U/s:138 of N.I. Act and as such they are convicted of the said offence U/s:255 (2) Cr.P.C. and sentenced to pay a fine of <u>Rs:40,50,000/-</u> and out of the said fine amount as is evident the accused have already paid Rs:17,80,000/- and the balance amount of Rs:22,70,000/- shall be paid by all the accused together within one month and on such payment an amount of <u>Rs:22,50,000/-</u> shall be paid to the complainant as compensation U/s:357 (1) (b) Cr.P.C. and in default of payment of fine they (each of A1 represented byA2, A2 and A3) shall undergo S.I. for a period of <u>11 months.</u>"

It is, thus, clear that the compensation amount referred to by the learned Magistrate is part and parcel of the fine amount directed to be paid by the petitioners herein. The learned Sessions Judge, somehow, at one place, used the expression "compensation awarded". Be that as it may, the authority relied on by the petitioners in **S. Aneef v. M.**

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[1]. AIR 2012 SC 528

Shafath Ali Khan and another[2] was considered by the learned Sessions Judge and answered that submission in paragraph No.6 thus:

> "6. I came across a decision reported in 2005 (2) ALD Crl.P.628 (AP) in a case between S. Aneef Vs. M. Shafath Ali Khan and another. The reference is made by Hon'ble Single Judge of AP High Court for consideration of issue whether the trial court award compensation while imposing a sentence of which fine does not form a part in purported exercise of powers U/s.357(3) of Cr.P.C. is such compensation amount not liable to be paid either before the period alone for presenting the appeal has elapsed or when the appeal is presented before the decision in appeal and whether the appellant court before whom the appeal is presented by the accused has discretion in the matter of modulating the grant of an interlocutory order (suspension of grant of bail) by imposing condition as to how payment of compensation shall be made pending decision in the appeal. Several other decisions were discussed and finally held that under sub section 389(1) of Cr.P.C. The appellate court can pass interim orders of suspension with any conditions or terms as warrant in the circumstances in respect of compensation awarded under Section 3 of 357 of Cr.P.C. Accordingly the reference is answered."

8. Be that as it may, in **Stanny Felix Pinto v. Jangid Builders Pvt. Ltd. and another**[3], the Hon'ble Supreme Court approved the payment of fine amount or part thereof as a condition precedent therein suspending the sentences. The relevant portion (Paragraph No.2) would read thus:

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2. 2005 (2) ALD (Cri) 628 (AP)
3. (2001) 2 SCC 416

> "2. When a person was convicted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment and fine he moved the superior court for suspension of the sentence. The High Court while entertaining his revision granted suspension of the sentence by imposing a condition that part of the fine shall be remitted in court within a specified time. It is against the said direction that this petition has been filed. In our view the High Court has done it correctly and in the interest of justice. We feel that while suspending the sentence for the offence under Section 138 of the Negotiable Instruments Act it is advisable that the court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal. In this case the grievance of the appellant is that he is required by the High Court to remit a huge amount of rupees four lakhs as a condition to suspend the sentence. When considering the total amount of fine imposed by the trial court (twenty lakhs of rupees) there is nothing unjust or unconscionable in imposing such a condition. Hence, there is no need to interfere with the impugned order. As such no notice need be issued to the respondent. Appeal is accordingly dismissed."

9. When the compensation constitutes part of fine amount imposed by the learned Magistrate, in view of the law declared by the Hon'ble Supreme in the aforesaid decision, the direction given by the learned Sessions Judge cannot be construed as infirm. The learned Sessions Judge, however, granted two months' time, and when the petitioners

approached this Court on the second date of hearing (11.11.2016), stay of all further proceedings was granted which was extended from time to time till 28.11.2016 and further extended till 01.02.2017. Therefore, it is desirable to grant two months' time from today within which the condition to deposit 1/4th of the compensation amount as directed by the learned Sessions Judge shall be complied with.

Therefore, the present Criminal Petition is dismissed at the stage of admission itself with the observation as indicated in the above. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

February 13, 2017.
Mgr